NALC

Legal Topic Note

LTN 40

November 2016

LOCAL COUNCILS' DOCUMENTS AND RECORDS

Introduction

1. Information about local council documentation is contained in Chapter 11 of 'Arnold-Baker on Local Council Administration' (Tenth Edition). This Note is intended to update and supplement that information, with particular reference to the length of time documents should be retained by local councils. Many documents are now only held electronically so the same arrangements for keeping records and copies should be applied to an electronic document as for a paper document.

Financial returns and accounts

2. NALC's Model Financial Regulations 2016 (England and Wales) contain information on council audit and accounting requirements – see the NALC website.

Retention of documents

3. Attached is an Annex indicating the appropriate minimum retention periods for the most important documents for audit and other reasons. There is a clear need to retain documentation for audit purposes, staff management, tax liabilities, and the eventuality of legal disputes and legal proceedings (explained in paragraphs 7-11 below and in the attached Annex). Subject to these reasons for retaining documents, and as a basic starting point, papers and records may be destroyed if they are no longer of use or relevant. If in doubt, document(s) should be retained until proper advice has been received.

4. Other documents not mentioned in the Annex and not covered in Chapter 11 of 'Arnold-Baker on Local Council Administration' may be treated as follows -

Planning papers

- Where planning permission is granted, the planning application, any plans and the decision letter should normally be retained until the development has been completed so that, if required, the council can check that the development

proceeds in accordance with the terms and conditions of the permission. Where planning permission is granted on appeal, a copy of the appeal decision should also be retained. It may sometimes be sensible to retain an appeal decision indefinitely because of wider implications (e.g. the decision may set a precedent for other developments in the locality).

- Where planning permission is refused, the papers should be retained until the period within which an appeal can be made has expired. If an appeal is made, and dismissed, the decision letter may, as in (a) above, be worth retaining against further applications relating to the same site.

- Where a substantial number of planning applications are received from the local planning authority, it is advisable for a council to have an effective referencing and filing system.

- Copies of Local Plans and similar documents should be retained as long as they are in force.

Insurance policies

- All insurance policies should be kept for as long as it is possible for a claim to be made under them. Irrespective of how long policies and correspondence are retained, the recommendation is that councils ensure that they keep a permanent record of insurance company names and policy numbers for all insured risks. Regulation 4 of the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI. 2753) requires local councils, as employers, to retain certificates of insurance against liability for injury or disease to their employees arising out of their employment (this insurance is mandatory under the Employers' Liability (Compulsory Insurance) Act 1969) for a period of 40 years from the date on which the insurance is commenced or renewed.

Information from other bodies

- (e.g. circulars etc. from county associations, NALC and other bodies (e.g. principal authorities)) – such information should be retained for as long as it is useful and relevant.

Magazines, Journals and other publications

- A council may want to keep its own publications (e.g. news letters). Journals published by others (e.g. local government news journals and magazines) should

be retained as long for as they are useful and relevant.

The Legal Deposit Libraries Act 2003 (the 2003 Act) and the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (2013 Regulations) require any body which after 1 February 2004 has published works in print or after 6 April 2013 has published electronic works off line, to deliver, at its own expense, a copy of them to the British Library Board (which manages and controls the British Library). (Off line publication includes documents on CD, USB drive, and similar). Electronic works published on line after 6 April 2013 only have to be delivered to the British Library if requested. The British Library holds books, periodicals, manuscripts and other publications for reference, study and information. Printed and electronic works as defined by the 2003 Act include those published by a local council (or a parish or community meeting without a separate parish or community council) including a pamphlet, magazine, newspaper, map, plan, chart or table. Some other deposit libraries are entitled to copies of works if they request them but it is unlikely that they will request documents from local councils. There is a separate NALC legal briefing L04-10 in respect of the 2003 Act and the 2013 Regulations. For more information about depositing printed materials with the British Library please see:
http://www.bl.uk/aboutus/legaldeposit/printedpubs/depositprintedpubs/deposit.html

Correspondence

- If related to audit matters, correspondence should be kept for the appropriate period specified in the Annex to this Note. In planning matters, correspondence should be retained for the same period as suggested for other planning papers. For other correspondence (unless relating to staff), no firm guidelines can be laid down (but see paragraphs 7 – 11 below).

Documentation relating to staff

- Should be kept securely and in accordance with the eight data protection principles contained in the Data Protection Act 1998. The principles provide that personal data in relation to staff should not be kept for longer than is necessary for the purpose it was held. However even after an employment relationship has ended, a council may need to retain and access staff records for former staff for the purpose of giving references, payment of tax, national insurance contributions and pensions, and in respect of any related legal claims made against the council. The time limits within which a claim (and any appeal) may be lodged against an employer at an employment tribunal are set out in the legislation that contains the

employment right in question or failing that by reference to the Limitation Act 1980 (as amended) considered in paragraph 7 below. The time for lodging a claim at an employment tribunal is usually measured from the date that the employment relationship ended or the date of the act complained of.

Local/historical information

- The Local Government (Records) Act 1962 provides that parish councils (and parish meetings in parishes without a separate parish council) may acquire records of local interest and accept gifts or records of general and local interest in order to promote the use of such records (defined as materials in written or other form setting out facts or events or otherwise recording information).

Arrangements for the deposit, storage and management of documents

5. In accordance with s. 227 of the Local Government Act 1972 (the 1972 Act), if a parish council requests the district council in which the parish is situated or a community council in Wales requests the county or county borough council in which the community is situated, the relevant principal authority must provide proper depositories for all the specified papers (defined as public books, writings, council papers and all documents directed by law to be kept) belonging to the parish or community for which there is no other provision. (In the case of a parish or community not having a separate parish or community council, the council of the district in which the parish, or the county or county borough council in which the community is situated must provide proper depositories for all the specified papers under the control of the parish meeting or belonging to the community but in England only with the consent of the parish meeting). Documents of local and or historical importance, if not retained and stored by a local council, with or without reliance on the provisions of s.227 of 1972 Act, should be offered first to the county record office if there is one. The county archivist there will always be willing to advise on which records should be permanently preserved.

6. Local councils (and parish or community meetings of parishes or communities without a separate council) are advised to implement system(s) of paper and electronic records management (including those records retained for audit purposes reviewed annually by a council's internal auditor). Such systems should ensure the storage and security of, access to and disposal of both paper and electronic records. It is essential that any such system(s) (and policies) relating to record management include an annual review of the records themselves and also the effectiveness of such systems(s) (and policies).

Retention of documents for legal purposes

7. Most legal proceedings are governed by the Limitation Act 1980 (as amended). The 1980 Act provides that legal claims may not be commenced after a specified period. The specified period varies, depending on the type of claim in question. The table below sets out the limitation periods for the different categories of claim. The reference to 'category' in the table refers to claims brought in respect of that category.

Category	Limitation Period
Negligence (and other 'Torts')	6 years
Defamation	1 year
Contract	6 years
Leases	12 years
Sums recoverable by statute	6 years
Personal Injury	3 years
To Recover Land	12 years
Rent	6 years
Breach of Trust	None

8. Where the limitation periods above are longer than other periods specified in this Note, the documentation should be kept for the longer period specified. Some types of legal proceedings may fall within two or more categories. Rent arrears, for example, could fall within the following three categories (depending on the circumstances):

- contract (6 years) – because all tenancies and leases are contracts;
- leases (12 years) – if the arrears are due under a lease; and
- rent (6 years) – if the arrears are due under a tenancy (and not a lease).

In these circumstances, NALC advises that the relevant documentation should be kept for the longest of the three limitation periods.

9. The same principles apply in the case of debts. If the debt arises under a simple contract the limitation period will be six years but if the debt arises under a lease the limitation period will be 12 years (unless it relates to rent in which case the limitation period will be six years). A final complication relates to sums due under leases which are 'reserved as rent'. Sometimes, for example, service charges are expressed to be payable as 'additional rent'. The limitation period for service charges in those

circumstances will be six years – even though the sums are due under a lease.

10. As there is no limitation period in respect of trusts, councils are advised that they should never destroy trust deeds and schemes and other similar documentation.

11. For the sake of completeness it should be noted that some limitation periods can be extended. Examples include:

    - where individuals do not become aware of damage until a later date (e.g. in the case of disease);
    - where damage is hidden (e.g. to a building);
    - where a person is a child or suffers from a mental incapacity;
    - where there has been a mistake by both parties or
    - where one party has defrauded another or concealed facts.

12. In such circumstances individual councils will need to weigh (i) the costs of storing relevant documents and (ii) the risks of:

    - claims being made;
    - the value of the claims; and
    - the inability to defend any claims made should relevant documentation be destroyed.

13. It hardly needs to be said that the higher the value of a contract or the higher the risk or value of a claim being made, the more likely it is that the greater expense/ inconvenience of storing documents for longer periods can be justified. It may be possible to have documents scanned onto DVD at a reasonable cost to reduce the cost of storage space. Councils should also confirm the precise wording of any insurance policies they have to ensure that they comply with any terms they contain in respect of the retention of documents and information.

Data Protection and Freedom of Information Considerations

14. The Lord Chancellor's Code of Practice on the Management of Records issued under section 46 of the Freedom of Information Act 2000 applies to public authorities and also bodies which are subject to the Public Records Act 1958 (the 1958 Act). Although local councils are not subject to the 1958 Act, they should familiarise themselves with the contents of the Code of Practice so they can formulate their own system of records

management. The Code of Practice is available on the internet and can be accessed via the following link: https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf.

15. Further information in respect of the Freedom of Information Act 2000 is set out in NALC LTN 37 (Freedom of Information) and in respect of the Data Protection Act 1998 in NALC LTN 38 (Data Protection).

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
22	Disciplinary & Grievance Arrangements	Sets out arrangements for dealing with employment issues
23	Health and Safety	Sets out need for public liability insurance
28	Basic Charity Law	Sets out duties of custodian trustees to hold title deeds of charity
37	Freedom of Information	Sets out the information councils are obliged to disclose.
38	Data Protection	Sets out the circumstances in which personal data should not be disclosed.
42	Occupiers Liability	Sets out need for public liability insurance.
60	Copies of Planning Documents	Sets out the right to planning documents and the copyright implications.
68	Negligence	Sets out the need for pubic liability insurance.

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ANNEX TO LEGAL TOPIC NOTE 40

RETENTION OF DOCUMENTS REQUIRED FOR THE AUDIT OF PARISH COUNCILS

DOCUMENT	MINIMUM RETENTION PERIOD	REASON
▪ Minute books	Indefinite	Archive
▪ Scales of fees and charges	6 years	Management
▪ Receipt and payment account(s)	Indefinite	Archive
▪ Receipt books of all kinds	6 years	VAT
▪ Bank statements, including deposit/savings accounts	Last completed audit year	Audit
▪ Bank paying-in books	Last completed audit year	Audit
▪ Cheque book stubs	Last completed audit year	Audit
▪ Quotations and tenders	6 years	Limitation Act 1980 (as amended)
▪ Paid invoices	6 years	VAT
▪ Paid cheques	6 years	Limitation Act 1980 (as amended)
▪ VAT records	6 years generally but 20 years for VAT on rents	VAT
▪ Petty cash, postage and telephone books	6 years	Tax, VAT, Limitation Act 1980 (as amended)
▪ Timesheets	Last completed audit year 3 years	Audit (requirement) Personal injury (best practice)
▪ Wages books	12 years	Superannuation
▪ Insurance policies	While valid	Management
▪ Certificates for Insurance against liability for employees	40 years from date on which insurance commenced or was renewed	The Employers' Liability (Compulsory Insurance) Regulations 1998 (SI. 2753), Management.
▪ Investments	Indefinite	Audit, Management
▪ Title deeds, leases, agreements, contracts	Indefinite	Audit, Management

▪ Members allowances register	6 years	Tax, Limitation Act 1980 (as amended)

DOCUMENT	MINIMUM RETENTION PERIOD	REASON
For Halls, Centre, Recreation Grounds		
▪ application to hire ▪ lettings diaries ▪ copies of bills to hires ▪ record of tickets issued	6 years	VAT
For Allotments		
▪ register and plans	Indefinite	Audit, Management
For Burial Grounds		
▪ register of fees collected ▪ register of burials ▪ register of purchased graves ▪ register/plan of grave spaces ▪ register of memorials ▪ applications for interment ▪ applications for right to erect memorials ▪ disposal certificates ▪ copy certificates of grant of exclusive right of burial	Indefinite	Archives, Local Authorities Cemeteries Order 1977 (SI. 204)

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