

Standing Orders – Officer Employment

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Note

The following Standing Orders are mandatory:

Standing Orders G2.1 and G2.2 (authorised versions – 1993 Regulations); and
Standing Orders G3 – G5 (2001 Regulations)
Standing Orders G4.5 (2015 Regulations)

G1. Interpretation

G1.1 In these Standing Orders:

“the 1989 Act”	means	the Local Government and Housing Act 1989
“the 1993 Regulations”	means	the Local Authorities (Standing Orders) Regulations 1993
“the 2000 Act”	means	the Local Government Act 2000
“the 2001 Regulations”	means	the Local Authorities (Standing Orders) (England) Regulations 2001
“the 2011 Act”	means	the Localism Act 2011
“ the Council”	means	Torbay Council
“Chief Finance Officer” and “Monitoring Officer”	have the same meanings as	in Regulation 2 of the 2001 Regulations
“Head of the Paid Service”	means	the person designated as the head of the Council’s paid service under Section 4(1) of the 1989 Act
“chief officer”	has the same meaning as	in Regulation 1 of the 1993 Regulations and includes the Head of the Paid Service
“designated independent person”	means	person appointed under Section 28(7) of the 2011 Act
“disciplinary action”	means	any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract
“Cabinet”	has the same meaning as	“executive” in Part II of the 2000 Act
“local government elector”	Means	means a person registered as a local government elector in the register of electors in the authority’s area in accordance with the Representation of the People Acts
“member”	includes	any co-opted member of any committee or sub-committee

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“officer”	means	a person appointed to or holding a paid office or employment under the Council
“group assistant”	means	an assistant for a political group appointed under Section 9 of the 1989 Act
“the Panel”	means	a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority, namely the Investigating Sub-Committee appointed by the Employment Committee
“proper officer”	means	an officer appointed by the Council for the purposes of the provisions of these Standing Orders
“relevant meeting”	means	a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer
“statutory chief officer”, “non-statutory chief officer” and “deputy chief officer”	have the same meanings as	in Section 2 of the 1989 Act

G2. Recruitment of Head of Paid Service and Chief Officers

G2.1 Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Head of the Paid Service will:

- (a) draw up a job description and person specification setting out:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the job description and person specification mentioned in paragraph (a) above to be sent to any persons on request.

G2.2 Where a post has been advertised in accordance with Standing Order G2.1, either:

- (a) all qualified applicants shall be interviewed; or
- (b) a short list of such qualified applicants shall be selected and those included on the short list shall be interviewed

but where no qualified person has applied the Council shall make further arrangements for advertisement in accordance with Standing Order G2.1.

G2.3 Every appointment of a chief officer shall be made by the Council (or a committee or a sub-committee if delegated by Council) except that the appointment (or renewal of contract) of non-statutory chief officers may (if delegated to him/her) be made by the Head of the Paid Service after consultation with the Civic Mayor.

G3. Appointments, Disciplinary Actions and Dismissals that must be Discharged by the Head of Paid Service or Other Officers

G3.1 Subject to Standing Orders G3.2 and G4.4, the function of appointment and dismissal of (and taking disciplinary action against) any officer must be discharged, on behalf of the Council, by the Head of the Paid Service (or by an officer nominated by him/her).

G3.2 Standing Order G3.1 shall not apply to the appointment or dismissal of, or disciplinary action against:

- (a) the Head of the Paid Service;
- (b) a statutory chief officer;
- (c) a non-statutory chief officer
- (d) a deputy chief officer
- (e) assistants for political groups

(NOTE: The Council has delegated certain non-mandatory powers in relation to appointments, disciplinary action and dismissals to the Employment Committee and/or the Chief Executive and/or other officer in accordance with Part 3 of the Constitution.)

G4. Appointments or Dismissals Delegated to Committees and Sub-Committees

- G4.1 (1) Where a committee, sub-committee or an officer is discharging, on behalf of the Council, the function of the appointment or dismissal of the Head of the Paid Service, the Council must approve that appointment before an offer of appointment is made to him/her or, as the case may be, must approve that dismissal before notice of dismissal is given to him/her.
- (2) Where a committee, sub-committee or an officer is discharging, on behalf of the Council, the function of the dismissal of the Chief Finance Officer or Monitoring Officer, the Council must approve that dismissal before notice of dismissal is given to him/her.
- (3) Where a committee or a sub-committee of the Council is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of Standing Order G3.2, at least one member of the Cabinet must be a member of that committee or sub-committee.

- G4.2 (1) In this Standing Order, “appointor” means, in relation to the appointment of a person as an officer of the Council, the Council or (where a committee, sub-committee or officer is discharging the function of appointment on behalf of the Council) that committee, sub-committee or officer, as the case may be.
- (2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of Standing Order G3.2 must not be made by the appointor until:
- (a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
 - (b) the proper officer has notified every member of the Cabinet of:
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and
 - (iii) the period within which any objection to the making of the offer is to be made by the Leader of the Council on behalf of the Cabinet to the proper officer; and
 - (c) either:
 - (i) the Leader of the Council has, within the period specified in the notice under sub-paragraph (b)(iii) above, notified the appointor that neither he/she nor any other member of the Cabinet has any objection to the making of the offer; or
 - (ii) the proper officer has notified the appointor that no objection was received by him/her within that period from the Leader of the Council; or
 - (iii) the appointor is satisfied that any objection received from the Leader of the Council within that period is not material or is not well-founded.
- G4.3 (1) In this Standing Order, "dismissor" means, in relation to the dismissal of an officer of the Council, the Council or (where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council) that committee, sub-committee or other officer, as the case may be.
- (2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of Standing Order G3.2 must not be given by the dismissor until:
- (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;

- (b) the proper officer has notified every member of the Cabinet of:
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Cabinet to the proper officer; and
- (c) either:
 - (i) the Leader of the Council has, within the period specified in the notice under sub-paragraph (b)(iii) above, notified the dismissor that neither he/she nor any other member of the Cabinet has any objection to the dismissal;
 - (ii) the proper officer has notified the dismissor that no objection was received by him/her within that period from the Leader of the Council; or
 - (iii) the dismissor is satisfied that any objection received from the Leader of the Council within that period is not material or is not well-founded.

G4.4 Nothing in Standing Order G3.1 shall prevent a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by:

- (a) another person against any decision relating to the appointment of that other person as an officer; or
- (b) an officer against any decision relating to the dismissal of, or taking disciplinary action against, that officer.

(Standing Orders G2 to G4.4 are compulsory provisions pursuant to Part 1, Regulations 3(1) and 4(1), Schedule 1 of the Local Authorities (Standing Orders) (England) Regulations 2001)

G4.5 Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer

Where a question of dismissal (either for misconduct or capability) is raised in connection with the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, the Officer shall not be dismissed unless the procedure set out in in Schedule 3 to the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 is complied with and as set out in paragraphs 1 to 8 below.

1. The Council (via the Employment Committee of Torbay Council) must appoint a Investigating Sub-Committee, if and when required, and at least 20 working days before the relevant meeting, to undertake investigations into allegations of misconduct or incapability. Such investigations shall be conducted in accordance

with the Head of Paid Service, Monitoring Officer or Chief Finance Officer terms and conditions of employment prior to any disciplinary hearing.

2. The Investigating Sub-Committee shall act as an Independent Panel as defined in the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015.
3. The Investigating Sub-Committee shall comprise three councillors (politically balanced), which must include at least one member of the Cabinet. The Council (via the Employment Committee of Torbay Council), must also invite relevant independent persons to be considered for appointment to the Investigating Sub-Committee, with a view to appointing at least two such persons to the Sub-Committee for the purposes of this Standing Order. “Relevant independent person” means any independent person who has been appointed by the Council or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.
4. The Council (via the Employment Committee of Torbay Council) must appoint to the Investigating Sub-Committee such relevant independent persons who have accepted an invitation in accordance with the following priority order:
 - (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
 - (b) any other relevant independent person who has been appointed by the Council;
 - (c) a relevant independent person who has been appointed by another authority or authorities.
5. The Council is not required to appoint more than two relevant independent persons but may do so.
6. The Investigating Sub-Committee’s terms of reference shall include:
 - (a) To determine whether an investigation shall be triggered as a result of complaint against the Chief Executive, Monitoring Officer or Chief Finance Officer, and appoint an Independent Investigating Officer to undertake such investigation.
 - (b) To consider and review the Independent Investigating Officer’s report.
 - (c) Subject (a) and (b) above, to hear disciplinary cases involving charges of misconduct or incapability against the Head of Paid Service, Monitoring Officer or Chief Finance Officer.
 - (d) To make recommendations to the Council regarding the dismissal or other appropriate sanction to be taken against Head of Paid Service, Monitoring Officer or Chief Finance Officer following a disciplinary or capability hearing in accordance with the terms and conditions of employment for Head of Paid Service, Monitoring Officer or Chief Finance Officer.

7. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account, in particular:
 - (a) any advice, views or recommendations of the Investigating Sub-Committee;
 - (b) the conclusions of any investigation into the proposed dismissal; and
 - (c) any representations from the relevant officer.
8. Any remuneration, allowances or fees paid by the Council to an independent person appointed to the Investigating Sub-Committee must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

G5. Disciplinary Action

(Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2001)

- G5.1 No disciplinary action in respect of the Head of the Paid Service, the Monitoring Officer or the Chief Finance Officer (except action described in paragraph G5.2 below) may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by an independent panel under Regulation 6 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- G5.2 The action mentioned in Standing Order G5.1 above is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.

G6. Group Assistants

- G6.1 No appointment shall be made to a post established by the Council pursuant to Section 9 of the 1989 Act (assistants for political groups), referred to in this Standing Order as a "Group Assistant", unless the Council has identified the appropriate funding for the post(s) and allocated a Group Assistant post to each of the political groups that qualify for one under that section.
- G6.2 No Group Assistant post shall be allocated by the Council to a political group that does not qualify for one under section 9 of the 1989 Act.
- G6.3 No political group shall be allocated more than one group assistant post.
- G6.4 Group assistants shall be appointed on merit but regard may be given to any person's political activities or affiliation in determining whether he/she should be appointed. (Local Government and Housing Act 1989, Section 9(1))
- G6.5 Group assistants shall be appointed by and 'report to' the Head of Governance Support following interview by a panel comprising the Head of Governance Support (or such other officer to whom he/she may delegate this responsibility), an officer from Human Resources and up to three members nominated by the Group Leader of the group to whom the Group Assistant will be allocated.

- G6.6 The terms and conditions of appointment of the Group Assistants shall be determined by the Chief Executive (in consultation with the Monitoring Officer) having regard to the 1989 Act.
- G6.7 The Head of Governance Support (or such other officer to whom he/she may delegate this responsibility) shall be responsible (in consultation with the relevant Group Leader) for taking any disciplinary action (including dismissal) in respect of any Group Assistant.