

Appendix 1 to Report 101/2005

Proposals for Elected Mayor/Cabinet Style of Governance for Torbay

**Draft
Submission to the Secretary of State for
Local Government**

May 2005

TORBAY COUNCIL

PROPOSALS FOR ELECTED MAYOR/CABINET FORM OF GOVERNANCE

LOCAL GOVERNMENT ACT 2000

1. INTRODUCTION

- 1.1 A petition was presented to Council on 24th November 2004 calling for a referendum to determine whether there was support to have a directly elected Mayor with a Cabinet. The petition states:

"We the undersigned, being electors for the area of Torbay seek a referendum on whether the electors for the area should elect a Mayor who, with a Cabinet, will be in charge of our local services and lead Torbay Unitary Authority."

- 1.2 The petition was declared invalid as the number of valid signatures (2,845) did not exceed the verification number (5,012) published by the Council in February 2004. The petition contained 5,246 signatures in total and, therefore, there was an insufficient number of valid entries to satisfy the statutory requirements and to automatically trigger a referendum.
- 1.3 Although technically the petition fell short of the legal requirements, the Council, at its meeting held on 3rd March 2005, decided to hold a Mayoral referendum to be conducted by way of an all-postal ballot ending on 14th July 2005. This decision has necessitated the preparation of the Council's proposals for a Mayoral/Cabinet form of governance.

2. SUMMARY OF PROPOSALS

- 2.1 By virtue of Section 25 of the Local Government Act 2000, the Council is required to prepare a statement setting out:

- (i) Details of its executive arrangements:
 - (a) the form of executive that is proposed;
 - (b) a description of the roles of the executive, including which functions are to be the responsibility of the executive;
 - (c) a description of the roles of the Full Council, including which plans and strategies that will be subject to approval by Full Council;
- (ii) The timetable with respect to the implementation of the proposals;
- (iii) The extent to which the proposals are likely to assist in securing continuous improvement in the way the Council's functions are exercised;
- (iv) The steps which the Council has taken to consult local government electors and other interested parties in Torbay; and
- (v) The outcome of the consultation and the extent to which that outcome is reflected in the proposals.

- 2.2 The Council's existing governance arrangements, based on the Leader/Cabinet model, were adopted on 16th January 2002. These have evolved over time following reviews of the Constitution undertaken by the Council. The current arrangements constitute the Council's "fall-back" proposals (produced separately in the form of the Constitution).

- 2.3 The Council's "main" proposals, based on the elected Mayor/Cabinet form of governance, are similar to the current arrangements operated by the Authority. Indeed, the Council has no plans to approach the referendum with materially different "main" and "fall-back" proposals.

3. EXECUTIVE

- 3.1 The Executive is at the heart of the day-to-day decision-making process and has a key role in proposing the budget and the policy framework to Council. The Executive leads the implementation of Council policy within the budget and policy framework and will carry out all of the local authority's functions which are not the responsibility of any part of the authority, whether by law or under the Constitution.
- 3.2 The Executive will comprise the elected Mayor and between two and nine elected Members of the Local Authority appointed by the elected Mayor.
- 3.3 The elected Mayor will carry out the following roles:
- lead the Executive;
 - assign responsibilities to Executive Members;
 - provide community leadership
 - exercise executive functions within the specified areas for which he or she has a defined responsibility; and
 - in the name of the Executive, propose the general budget and policy plans to the Council.

4. DETERMINATION OF EXECUTIVE AND NON EXECUTIVE FUNCTIONS

- 4.1 The Council will follow the statutory guidance in dividing its functions between the Council and the Executive:
- The Local Government Act 2000 (Section 13) and the various Functions and Responsibilities Orders make the Full Council responsible for a prescribed list of functions. These may be discharged by the Full Council or delegated to committees, sub-committees or to officers.
 - A number of functions are defined in law as local choice functions and the Council may decide to discharge them through the executive or through Full Council, a committee, sub-committee or an officer. The allocation of these functions will be as set out in Appendix 1; and
 - All other functions are to be the responsibility of the Executive.

5. COUNCIL

- 5.1 The Council is composed of the elected Mayor and 36 Councillors, representing 15 Wards.
- 5.2 The person presiding at the meeting will have the following responsibilities:-
- to uphold and promote the purposes of the Constitution;
 - to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
 - to ensure that the Council meeting is a forum for debate of matters of concern to the local community and the place at which members who are not on the Executive are able to hold the Executive to account; and

- to promote public involvement in the Council's activities.
- 5.3 The title of Chairman would be used by the person presiding at the meetings of the Council (the elected mayor cannot undertake this role).
- 5.4 Decisions reserved to Full Council include:-
- Adopting the new constitution and any subsequent changes to it;
 - Agreeing the Council's policy framework;
 - Approving the budget (capital and revenue) and any plan or strategy for the control of borrowing or expenditure;
 - Taking decisions on functions that are the responsibility of the executive but are outside the agreed policy framework or budget;
 - Appointment of Leader of the Council;
 - Appointing Committees and setting their terms of reference;
 - Making or confirming the appointment of the Chief Executive;
 - Making byelaws;
 - Conferring the title of Honorary Freeman/Alderman;
 - Local Choice Functions which the Council decides should be undertaken by itself rather than the executive; and
 - Determining the Members' Allowances Scheme and amounts of Members' allowances and the elected Mayor's allowances.
- 5.5 The Policy Framework will comprise the following plans/strategies:
- Best Value Performance Plan;
 - Change Management Improvement Plan;
 - Children's and Young People's Strategic Partnership Business Plan;
 - Community Plan;
 - Community Safety Strategy;
 - Corporate Asset Management Plan;
 - Corporate Capital Strategy;
 - Cultural Strategy;
 - Plans and strategies which together comprise the Development Plan;
 - Diversity and Inclusion Strategic Policy;
 - Early Years Development and Childcare Implementation Plan;

- ❑ Education Development Plan;
- ❑ Food Safety Service Plan;
- ❑ Health and Safety Service Plan;
- ❑ Housing Strategy including the Housing Renewal Policy and Homelessness Strategy;
- ❑ Human Resources Strategy;
- ❑ Licensing Policy;
- ❑ Local Transport Plan;
- ❑ Organisational Development Plan;
- ❑ Scheme for Financing Schools;
- ❑ School Organisation Plan;
- ❑ Strategic Plan;
- ❑ Supporting People Strategy;
- ❑ Torbay Heritage Strategy;
- ❑ Trading Standards Service Plan;
- ❑ Waste Management Plan;
- ❑ Workforce Plan;
- ❑ Youth Justice Plan; and
- ❑ such other plans and strategies which the Council may decide should be added to the Framework.

6. OVERVIEW AND SCRUTINY

6.1 The Council will appoint an Overview and Scrutiny Board whose role will be to develop and review policies and to hold the Executive to account.

6.2 The Board will have the following powers:

- ❑ review or scrutinise decisions or action taken in respect of any functions which are the responsibility of the executive;
- ❑ make reports or recommendations to the Council or the executive in respect of any functions which are the responsibility of the executive;
- ❑ review or scrutinise decisions or action taken in respect of any functions which are not the responsibility of the executive;
- ❑ make reports or recommendations to the Council or the executive in respect of matters which affect the local authority's area or its inhabitants; and
- ❑ review or scrutinise decisions "called-in" under the Council's call-in arrangements and make recommendations to the decision-taker arising from this procedure.

- 6.3 The Board will be involved in developing new policies for consideration by the Executive. In addition, the Board will have a significant role in the examination and investigation of the work and impact of outside bodies on the communities that the Council serves.
- 6.4 The Board will be an effective counterbalance to the power of the Executive and examine their work – holding the Executive to account will be one of the key functions of the Board.
- 6.5 The Council will appoint an Overview and Scrutiny Co-ordinator who will have the overall responsibility for driving forward the scrutiny function of the Council. The Overview and Scrutiny Co-ordinator will chair the Board. The other seven elected Members of the Board will be the Scrutiny Lead Members (appointed by Council) who will have responsibilities for one of the following areas:
- ❑ Affordable Housing;
 - ❑ Safer Communities;
 - ❑ Culture;
 - ❑ Valuing our Environment;
 - ❑ Social Care and Health;
 - ❑ Learning; and
 - ❑ Economy.
- 6.6 The Board and any of its sub-committees dealing with education-related matters will include the following co-opted members with voting rights:
- ❑ One Church of England Diocesan representative;
 - ❑ One Roman Catholic Diocesan representative; and
 - ❑ Two parent governor representatives.
- 6.7 The Board will appoint a Health Scrutiny Board to scrutinise local health services in accordance with the requirements of the Health and Social Care Act 2001.
- 6.8 The Board will also appoint task-and-finish panels to carry out in-depth reviews of specific topics.
- 6.9 In addition, the Board will establish 15 Sub-Committees (known as Performance Boards) which will hold the Executive to account for the delivery of the outcomes of each theme of the Council and ensure the Council is delivering against its key targets and objectives.

7. REGULATORY COMMITTEES

- 7.1 The following Regulatory Committees will be established by the Council:
- ❑ **Development Control Committee.** The Committee will comprise 12 Members and have the overall responsibility for planning and development control matters;
 - ❑ **Licensing Committee.** The Committee will comprise 15 Members and have the responsibility for carrying out the licensing functions of the Council. Sub-Committees will be appointed by the Committee (comprising three Members of the Committee) to consider and determine all matters in connection with licensing applications (including those set out in the Statement of Licensing Policy);

- ❑ **Appeals Committee (School Transport, Student Awards, Discretionary Housing Payments and Licensing).** An Appeals Panel comprising of 12 Members will be appointed from which any Member from the Panel can be drawn to serve on the Appeals Committee (comprising five Members). The Committee will determine appeals in respect of school transport, student awards, discretionary housing payments and licensing.
- ❑ **Appeals Committee (Employment).** An Appeals Panel will be appointed comprising 12 Members from which any Member of the Panel can be drawn to serve on the Appeals Committee (comprising four Members). The Committee will determine appeals in relation to disciplinary matters, grievance and grading appeals.
- ❑ **Standards Committee.** A Standards Committee will be appointed comprising four Members of the Council and four independent members. It will have an important role in strengthening and maintaining high standards of conduct required of Councillors and officers.

7.2 The terms of reference for the regulatory committees are set out at Appendix 2.

8. OTHER COMMITTEE

8.1 The following committee will be established by the Council:

- ❑ **Appointments Committee.** The Committee will be established to determine appointments to Director positions of the Council, the Chief Executive of the Torbay Development Agency (TDA), Directors of the TDA Board and the Coroner.

8.2 The terms of reference of the Appointments Committee are set out at Appendix 2.

9. IMPLEMENTATION

9.1 The Council has determined that a referendum for an elected Mayor will take place by way of an all-postal ballot. The Council will adhere to the following timetable:

- ❑ The Council to consider, at its meeting on 11th May 2005, its submission to the Secretary of State based on the elected Mayor/Cabinet model of governance (submission to be despatched to meet deadline of 13th May);
- ❑ The all-postal ballot will end on 14th July 2005. In determining the referendum period, the Council has, in accordance with guidance, considered how the timing and form of referendum can maximise turnout. The referendum question prescribed by law is:

“Are you in favour of the proposal for Torbay Council to be run in a new way, which includes a Mayor, who will be elected by the voters of the borough, to be in charge of the Council services and to lead Torbay Council and the community which it serves?”

- ❑ The inaugural Mayoral election will be held on 20th October 2005 in the event of a “yes” vote in the referendum. The initial term of office of the elected Mayor will be three and a half years.

10. SECURING CONTINUOUS IMPROVEMENT

10.1 The Council, in reaching its decision on the elected Mayor and Cabinet form of governance, also had regard to the extent the proposals would be likely to assist in securing continuous improvement in the way in which the Council’s functions are exercised, having a regard to a combination of economy, efficiency and effectiveness, as required by Section 25(4) of the Act.

10.2 The key elements of the proposals which will reflect the duty of best value are as follows:-

- The Executive will provide strategic direction and will maintain close links with the Overview and Scrutiny Board;
- The Overview and Scrutiny Board will have a strong role in reviewing services and in proposing new policies;
- The Overview and Scrutiny Board will have a key role in the best value process through its involvement with best value reviews; and
- Community involvement and consultation will be a significant feature in the arrangements.

11. CONSULTATION WITH LOCAL ELECTORS AND OTHER INTERESTED PARTIES

11.1 Prior to drawing up the executive arrangements set out above, the Council undertook a programme of consultation with local electors and other interested parties as required by section 25(2) of the Act on the form of executive arrangements.

11.2 The Council had regard to both the wording and the spirit of the guidance issued by the Secretary of State on the form of consultation.

11.3 The results of the Consultation exercise are set out in Appendix 3

Appendices

- Appendix 1 Local Choice Functions
- Appendix 2 Terms of Reference of Committees etc.
- Appendix 3 Results of Consultation exercise

LOCAL CHOICE FUNCTIONS

Function	Executive or Council Function?
1. The determination of an appeal against any decision made by or on behalf of the authority	Council function.
2. The making of arrangements pursuant to section 94 (1) and 94 (4) of, and Schedule 24 to, the School Standards and Framework Act 1998 (admission appeals)	Council function.
3. The making of arrangements pursuant to section 67(1) of, and Schedule 18 to, the School Standards and Framework Act 1998 (appeals against exclusion of pupils)	Council function.
4. The making of arrangements pursuant to section 95(2) of, and Schedule 25 to, the School Standards and Framework Act 1998 (appeals by governing bodies in relation to children to whom section 87 of the Act applies)	Council function.
5. The making of arrangements for enabling questions to be put on the discharge of the functions of Devon and Cornwall Police Authority in accordance with section 20 of the Police Act 1996.	Council function.
6. The making of appointments to Devon and Cornwall Police Authority and other bodies under paragraphs 2 to 4 of Schedule 2 of the Police Act 1996.	Council function.
7. The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under section 5 of the Local Government Act 1999.	The approval of the Scope and Terms of Reference of Best Value Reviews, the selection of the final option for implementation and the approval of the Implementation Plan will all be Executive functions.
8. Any function relating to contaminated land under Part IIA of the Environmental Protection Act 1990 and subordinate legislation under that Part.	Executive function.
9. The discharge of any function relating to the control of pollution or the management of air quality.	Executive function.

Function	Executive or Council Function?
10. The service of an abatement notice in respect of a statutory nuisance.	Executive function.
11. The passing of a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.	Executive function.
12. The inspection of the authority's area to detect any statutory nuisance.	Executive function.
13. The investigation of any complaint as to the existence of a statutory nuisance .	Executive function.
14. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.	Executive function.
15. The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Executive function.
<p>16. The appointment (or revocation of any such appointment) of any individual to:</p> <p>(a) any office other than an office in which he is employed by the authority;</p> <p>(b) any body other than the authority or a joint committee of two or more authorities; or</p> <p>(c) any committee or sub-committee of such a body.</p>	Executive function save that appointment of Coroners under Section 1 of the Coroners Act 1988 shall be a Council function.
17. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.	Executive function.
18. Any function of a local authority in their capacity as a harbour authority (to the extent that the function does not fall within paragraph (1) above)	Executive function.
19. The making of agreements for the execution of highway works.	Executive function.

Function	Executive or Council Function?
20. Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended by the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001).	Executive function.

TERMS OF REFERENCE

OVERVIEW AND SCRUTINY BODIES, REGULATORY AND OTHER COMMITTEES,
AREA COMMITTEES AND OTHER BODIES

Overview and Scrutiny Board

Membership

8 members of the Council, 2 Diocesan and 2 Parent Governor Representatives, excluding members of the Executive

(politically balanced)

Terms of Reference

1. To approve a work programme for the Board and any other overview and scrutiny bodies for the year.
 2. To appoint sub-committees and/or working parties to perform the overview and scrutiny function with members drawn from the Board and/or the scrutiny panel comprising non-executive members.
 3. To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive.
 4. To make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive.
 5. To review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive.
 6. To make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive.
- To make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area.
8. In relation to Best Value Reviews, to consider
 - (a) The terms of reference and scope of reviews;
 - (b) Option appraisal reports; and
 - (c) Draft service improvement plans

and to make recommendations to the Executive on those matters

To consider all matters and issues arising from the Council's power of scrutinising local health services in accordance with the Health and Social Care Act 2001.

Health Scrutiny Board

6 members of the Council

(politically balanced)

Terms of Reference

1. To review and scrutinise any matter relating to the planning, provision and operation of the health services in Torbay.
2. To scrutinise any of the functions of the Council where there is a significant inter-relationship between those functions and health related matters.
3. To respond to consultation by any local NHS body with reference to any proposal for a substantial development of the health service in the area of Torbay or for a substantial variation in the provision of such service.
4. To develop a work programme for consideration by the Overview and Scrutiny Board.
5. To review and scrutinise the impact of the authority's own services and of key partnerships on the health of its population.
6. To encourage the Council as a whole, its Executive and other scrutiny committees to take into account the implications of their policies and activities on health, and health inequalities.
7. To make reports and recommendations to the NHS organisations, the Council, the Executive and other scrutiny bodies, and to other relevant bodies and individuals.
8. To evaluate and review the effectiveness of its recommendations in improving the health services for the people of Torbay.
9. In all of the above, to seek and take account of the views of the local population.

Development Control Committee

Membership

12 members of the Council

(politically balanced and membership comprising, if reasonably possible, members from the various areas of the Borough)

Terms of Reference

1. *At all times to have regard to the Torbay Local Plan 1995-2011 (Revised Deposit Version 2000) or, once adopted by Full Council, the final version of that Plan (“the Torbay Local Plan”).*
2. To consider and (if appropriate) determine (unless such determination is reserved by law to Full Council) all applications and all other matters (including issuing notices, making Orders and requesting the Monitoring Officer to issue civil or criminal proceedings) relating to:
 - Town and Country Planning
 - Conservation Areas
 - Listed Buildings
 - Scheduled Ancient Monuments
 - The display of advertisements
 - Tree Preservation Orders
 - Hedgerows
 - Public Rights of Way
 - Minerals
 - Waste
 - Highways matters (so far as they are not Executive functions)
3. The Committee shall not determine any application (or other matter) in a manner that will (in the opinion of either the Assistant Director (Strategic Environmental Policy) or the Assistant Director (Development and Conservation Services) not be in accordance with the Torbay Local Plan unless both those Officers recommend such determination and the determination is in entire accordance with their recommendation. If the Committee consider that an application (or other matter) should be determined not in accordance with the Torbay Local Plan then (unless their determination is in accordance with the recommendation of the Assistant Director (Strategic Environmental Policy) and the Assistant Director (Development and Conservation Services)) the item shall be referred to Council for determination.
4. The Committee shall not determine any application (or other matter) that relates to land owned, controlled or occupied by the Council in a manner that is not in accordance with the recommendation

of the Assistant Director (Development and Conservation Services). If the Committee consider that an application (or other matter) that relates to land owned, controlled or occupied by the Council should be deferred or determined not in accordance with the recommendation of the Assistant Director (Development and Conservation Services) the Assistant Director may refer that matter to Council for consideration or determination.

Licensing Committee

Membership

15 members of the Council
(politically balanced)

Terms of Reference

To carry out the Licensing functions of the Council

Licensing Sub Committee

Membership

3 Members of the Licensing Committee
(Licensing Sub-Committees to be exempt from the rules of committee proportionality, as defined in the Local Government and Housing Act 1989 and supporting regulations)

Terms of Reference

To consider and determine all matters in connection with licensing applications (including those set out in the Statement of Licensing Policy).

Appointments Committee

Membership

4 members of the Council

(politically balanced comprising the Leader and Deputy Leader of the Council, a Member of the Conservative Group and a Scrutiny Lead Member)

Terms of Reference

1. To determine appointments to Director positions of the Council, including the terms and conditions of contracts, appointment procedures and arrangements.
2. To consider applications for the position of Coroner and to recommend to Council the person to be appointed to that post.
3. To exercise all of the Council's powers in respect of the Torbay Development Agency Limited (TDAL) in connection with the appointment (and removal) of the Directors of the TDAL Board.
4. To determine the appointments of the Chief Executive and the Director of Regeneration and Tourism of Torbay Development Agency, including the terms and conditions of contracts, appointment procedures and arrangements.

Appeals Panel (School Transport, Student Awards, Licensing and Discretionary Housing Payments)

Membership

A pool of 12 members from which any of them can be drawn to serve on the Appeals Committee (comprising 5 members).
(politically balanced)

Terms of Reference

To determine appeals in respect of school transport, student awards, discretionary housing payments, employment issues and licensing.

Appeals Panel (Employment)

Membership

A pool of 12 members to be established from which any of them can be drawn to serve on the Appeals Committee (Employment) (comprising 4 members).

(politically balanced)

Terms of Reference

To hear and determine appeals in relation to disciplinary matters, grievance and grading appeals.

Standards Committee

Membership

4 members of the Council and 4 independent members

(politically balanced)

Terms of Reference

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives;
2. To assist councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To monitor the operation of the Members' Code of Conduct;
5. To advise, train or arrange to train councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
6. To grant dispensations to councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct; and
7. To deal with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter which is referred by an ethical standards officer to the Monitoring Officer.

8. To review protocols in relation to:-

- (a) the use of information technology
- (b) probity in planning
- (c) Member/Officer relations
- (d) Officers Code of Conduct
- (e) whistle-blowing

and any other protocols adopted by the Council.

9. To consider reports in relation to Ombudsman investigations.

10. To review the Constitution in relation to ethics and probity issues.

11. To advise others on probity and ethics.

12. To monitor the members' training programme.

13. To share experience with other standards committees.

The Council may arrange for the Standards Committee to exercise such other functions as the Council considers appropriate.