

Tuesday, 20 July 2021

AUDIT COMMITTEE

A meeting of **Audit Committee** will be held on

Wednesday, 28 July 2021

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Loxton (Chairman)

Councillor Hill

Councillor Brooks

Councillor Kennedy

Councillor Johns

Councillor O'Dwyer

Councillor Douglas-Dunbar

Together Torbay will thrive

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Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

AUDIT COMMITTEE AGENDA

1. **Apologies**
To receive any apologies for absence, including notifications of any changes to the membership of the Committee.
2. **Minutes** (Pages 4 - 9)
To confirm as a correct record the Minutes of the meeting of the Audit Committee and Adjourned Audit Committee held on 26 and 27 May 2021.
3. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent Items**
To consider any other items that the Chairman decides are urgent.
5. **Torbay Council Audit Plan (External Audit)** (To Follow)
To consider a report that provides an overview of the planned scope and timing of the statutory audit of the Council.
6. **Informing the Audit Risk Assessment for Torbay Council 2020/21** (To Follow)
To consider a report that contributes towards the effective two-way communication between Torbay Council's external auditors and Torbay Council's Audit Committee, as 'those charged with governance'.

7. **The CIPFA Financial Management Code - Desk Top Review 2020/21** (Pages 10 - 27)
To consider a report that sets out a desk top review for 2020/21 undertaken by the Chief Finance Officer in line with the CIPFA Financial Management Code of Practice.
8. **Policy for the Prevention of the Facilitation of Tax Evasion** (Pages 28 - 41)
To consider a report on the above.
9. **HR Investigations and Whistleblow** (Pages 42 - 47)
To consider a report that provides a high level summary of the number of HR investigations and Whistleblow investigations.
10. **Budget Outturn Monitoring 2020/21 – Quarter Four - Outturn Report of the Overview and Scrutiny Board** (Page 48)
To consider a recommendation of the Overview and Scrutiny Board.

Meeting Attendance

Whilst national Covid-19 restrictions were lifted on 19 July 2021, Torbay Council has taken the decision to continue operating in a Covid-19 secure manner in order to protect staff and visitors entering Council buildings and to help reduce the spread of Covid-19 in Torbay. This includes social distancing and other protective measures (e.g. wearing a face covering (unless exempt), signing in and using hand sanitiser). Our public meetings will continue to operate with social distancing measures in place and as such there are limited numbers that can access our meeting rooms. Also, to help prevent the spread of the virus, anyone attending meetings is asked to take Covid lateral flow test the evening before - if you have a positive test result please follow the Government's guidelines and do not attend the meeting.

If you wish to attend a public meeting please contact us to confirm arrangements for your attendance.

Minutes of the Audit Committee

26 May 2021

-: Present :-

Councillor Loxton (Chairman)

Councillors Dart, Hill, Kennedy and O'Dwyer

236. Apologies

An apology for absence was received from Councillor Howgate.

237. Minutes

The Minutes of the meeting of the Audit Committee and Adjourned Audit Committee held on 24 and 29 March 2021 respectively were confirmed as a correct record and signed by the Chairman.

238. Declarations of interests

Councillor O'Dwyer declared a non-pecuniary interest in item 11 (minute 245) as he was a Council appointed Director of the TDA.

239. Audit Committee Terms of Reference

Members questioned whether the Audit Committees Terms of Reference should include a specific reference to audit reports regarding arm's length companies.

Resolved:

That the Monitoring Officer be requested to undertake the process for amending the Audit Committee's Terms of Reference as set out in the Constitution to include the following:

'To consider summaries of Internal Audit reports in respect of the Council's wholly owned companies, as requested.'

240. Draft Annual Governance Statement 2020/2021

Members considered a report on the draft Annual Governance Statement 2020/2021. The Head of Policy, Performance and Community Engagement informed the Committee that the preparation of the Annual Governance Statement provides the opportunity for the organisation to review its processes, controls and

objectives and to provide assurance to Members, Senior Officers and stakeholders as to the reliability of its statement of accounts and the probity of its operations.

Members requested a number of amendments which included:

- the appointment of a new Chief Executive;
- information management and complaint performance indicators;
- greater commentary on the changes to governance and decision making as a result of Covid-19;
- the introduction of a Strategic Housing Board;
- the actions in respect of S106 Agreements not being completed; and
- references to the housing land supply being updated.

Resolved:

That the draft Annual Governance Statement be updated with the comments made at the Audit Committee and authority be delegated to the Head of Policy, Performance and Community Engagement in consultation with Chair and Vice-Chair of the Audit Committee, to forward the draft Annual Governance Statement for 2020/2021 to the External Auditors for comment.

241. Internal Audit - Annual Audit Report 2020/21

Members considered the Internal Audit – Annual Audit Report 2020/21 which sets out the background to the audit service provision; a review of work undertaken in 2020/21 and provides an opinion on the overall adequacy and effectiveness of the Authority’s internal control environment. The Head of Internal Audit advised that the overall opinion was one of “Reasonable Assurance” on the adequacy and effectiveness of much of the Authority’s internal control framework. The exception to this was the Children’s Services Directorate (excluding Education where the opinion was Reasonable Assurance), although it was acknowledged that there was a positive direction of travel as supported by external assessment.

Members raised questions in relation to:

- Efficiencies with regards to SWISCo;
- Penetration testing of IT data;
- Audit of Health and Safety;
- Housing benefit subsidy claim;
- Digital/remote audits;
- Implementation of Council and NNDR internal audit recommendations; and
- Risk Management audit being deferred until 2022/23 financial year.

242. Treasury Management Outturn 2020/21 Report

In February 2019 the Council adopted the Chartered Institute of Public Finance and Accountancy’s Treasury Management in the Public Services: Code of Practice (the CIPFA Code) which requires the Authority to approve treasury management semi-annual and annual reports.

The Authority's treasury management strategy for 2020/21 was approved at a meeting on 6th February 2020. The Authority has borrowed and invested substantial sums of money and is therefore exposed to financial risks including the loss of invested funds and the revenue effect of changing interest rates. The successful identification, monitoring and control of risk remains central to the Authority's treasury management strategy. Members were requested to consider and note the submitted annual report on the treasury management activities undertaken during the year 2020/21.

Members requested that the definition of 'non-treasury investments' be revisited before the report is presented to Council and that advice be sought from the Monitoring Officer in respect of Appendix 2 being exempt information.

243. External Audit Plan

Members were advised that the External Audit Plan was not yet finalised and therefore this item was deferred until the Audit Committee meeting on 28 July 2021.

244. Exclusion of the Press and Public

Prior to consideration of the item in Minute 245 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

245. Internal Audit Report - TDA - Commissioning and Performance Monitoring Arrangements 2019-20

Members considered the exempt report which set out the findings of an Internal Audit report on the TDA commissioning and performance monitoring arrangements. Members were advised that the key findings related to performance monitoring. Members noted that the recommendations had been accepted by the Director of Place. Members were also informed that the Council had commissioned the Local Government Association to undertake a Peer Review.

Resolved:

That the LGA Peer Review Report on the TDA be presented to a future meeting of the Audit Committee for consideration in light of the Internal Audit Report - TDA Commissioning and Performance Monitoring Arrangements 2019-20.

246. Adjournment

At this juncture the meeting was adjourned until 2.30 pm on 27 May 2021.

Minutes of the Audit Committee

27 May 2021

-: Present :-

Councillor Loxton (Chairman)

Councillors Hill, O'Dwyer and Brooks

(Also in attendance: Councillors Kennedy and Johns)

247. Apologies

Apologies for absence were received from Councillors Dart and Howgate. Councillor Kennedy also gave her apologies as she was unable to attend the meeting in person, in accordance with the Local Government Act 1972. Councillor Kennedy did join virtually and was able to ask questions and take part in the debate but she was not permitted to take part in the formation of recommendations or vote.

248. Corporate Performance and Corporate Risk Register

The Committee considered the submitted report in respect of the Quarter 4 Corporate Performance and Corporate Risk Register. Members asked questions and received answers in relation to the following topics contained with the Corporate Performance report:

- Waste and recycling - the transition from TOR2 to SWISCo, the impact of Covid-19, the effectiveness of recording compliments and complaints, education and awareness of recycling;
- Temporary Accommodation – the anticipated impact of the Covid-19 eviction ban, seasonal fluctuations in those presenting as homeless, the Next Steps Programme and Council Tax Collection;
- Economic Regeneration – number of claimants, earnings by work place, number of economically active, availability of employment land and leisure activities within Torbay;
- Council Re-design – impact of Covid-19 and the use of office space, agency staff and costs;
- Corporate Complaints, Freedom of Information Requests, Subject Access Requests and member enquiry response times; and
- Registration of Births and Deaths.

**Meeting: Audit Committee
Cabinet**

**Date: 28 July 2021
24 August 2021**

Wards Affected: All

Report Title: The CIPFA Financial Management Code – Desk Top Review 2020/21

Cabinet Member Contact Details: Councillor Cowell, Cabinet Member for Finance,
Darren.cowell@torbay.gov.uk

Director/Assistant Director Contact Details: Martin Phillips, Chief Finance Officer,
martin.phillips@torbay.gov.uk

1. Purpose of Report

- 1.1 The report sets out a desk top review for 2020/21 undertaken by the Chief Finance Officer (CFO) in line with the CIPFA Financial Management Code of Practice (the Code).

2. Reason for Proposal and its benefits

We want Torbay and its residents to thrive.

We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

- 2.1 The proposals in this report help us to deliver this ambition by ensuring the Council has in place robust processes to satisfy the principles of good financial management supporting the Council in being fit for the future.
- 2.2 The reasons for the decision are to assist the Council in working towards full compliance with the code. The first full year of compliance is due to be 2021/22.
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3. Recommendation(s) / Proposed Decision

- (i) That Audit Committee note this report and considers Audit Committee's future reviews of the Council's compliance with the Financial Management Code.
- (ii) That Cabinet note this report.

Appendices

Appendix 1: The CIPFA Financial Management Code CFO "Desktop" Review 2020/21

Background Documents

The CIPFA Financial Management Code and Guidance Notes.

Supporting Information

1. Introduction

- 1.1 The code was released by CIPFA in October 2019. The code is designed to support good practice in financial management and to assist local authorities in demonstrating their financial sustainability. The Code therefore for the first time sets the standards of financial management for local authorities.
- 1.2 The Code is based on principles rather than prescription. Torbay Council must demonstrate that the requirements of the code are being satisfied, this is a collective responsibility of elected members, the Chief Finance Officer and the Senior Leadership Team.
- 1.3 The first full year of compliance will be 2021/22. This reflects the recognition that organisations will need time to work towards compliance.
- 1.4 To establish the level of compliance at present the Chief Finance Officer undertook a desk top review which is set out in Appendix 1
- 1.5 An action plan based on the initial desk top review will be completed and will be extended after a more detailed review of the Code during 2021/22.

2. Options under consideration

- 2.1 None

3. Financial Opportunities and Implications

- 3.1 Whilst the desk top review does not have any financial implications in terms of actual money, ensuring we have sound and robust systems reduces the opportunities for error and fraud.

4. Legal Implications

- 4.1 CIPFA's judgement is that although the code does not have legislative backing it applies to all local authorities and builds on existing best practice and for the first time sets explicit standards of financial management.

5. Engagement and Consultation

- 5.1 There has been no engagement and consultation as this is an internal review of the Councils processes.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 Not applicable

7. Tackling Climate Change

7.1 Not applicable

8. **Associated Risks**

8.1 To not undertake the review could result in the Council not being compliant with the code in 2021/22.

The CIPFA Financial Management Code

CFO “Desk Top” Review 2020/21

The CIPFA Financial Management Code was released by CIPFA in October 2019.

Extracts from the consultation document have been replicated in this document

Objectives

The CIPFA Financial Management Code (CIPFA FM Code) is designed to support good practice in financial management and to assist local authorities in demonstrating their financial sustainability. The CIPFA FM Code therefore for the first time sets the standards of financial management for local authorities.

The Code is based on a series of principles supported by specific standards and statements of practice which are considered necessary to provide the strong foundation to:

- financially manage the short, medium and long term finances of a local authority;*
- manage financial resilience to meet foreseen demands on services; and*
- financially manage unexpected shocks in their financial circumstances*

The Code is based on principles rather than prescription. Torbay Council must demonstrate that the requirements of the Code are being satisfied, **this is a collective responsibility of elected members, the Chief Finance Officer and the Senior Leadership Team.**

The FM Code should not be considered in isolation and accompanying tools, including the use of objective quantitative measures of financial resilience, should form part of the suite of evidence to demonstrate sound decision-making.

CIPFA’s judgement is that although the FM Code does not have legislative backing it applies to all local authorities.

The first full year of compliance will be 2021/22. This reflects the recognition that organisations will need time to work towards compliance.

The CIPFA Statement of Principles of Good Financial Management

The Code requires that a local authority demonstrates that its processes satisfy the principles of good financial management for an authority of its size, responsibilities and circumstances. Good financial management is proportionate to the risks to the authority's financial sustainability posed by the twin pressures of scarce resources and the rising demands on services. The FM Code identifies these risks to financial sustainability and introduces an overarching framework of assurance which builds on existing best practice but for the first time sets explicit standards of financial management.

The underlying principles of the Code:-

- Organisational **leadership** - demonstrating a clear strategic direction based on a vision in which financial management is embedded into organisational culture
- Accountability** - based on medium term financial planning which drives the annual budget process supported by effective risk management, quality supporting data and whole life costs
- Financial management is undertaken with **transparency** at its core using consistent, meaningful and understandable data, reported frequently with evidence of periodic officer action and elected member decision making
- Adherence to professional **Standards** is promoted by the leadership team and is evidenced.
- Sources of **assurance** are recognised as an effective tool mainstreamed into financial management and includes political scrutiny and the results of both external audit, internal audit and inspection.
- The long term **sustainability** of local services is at the heart of all financial management process and is evidenced by prudent use of public resources.

CIPFA Financial Management Standards Summary

| FM Standard Ref | CIPFA Financial Management Standards | Related Principal | Red 1-3 | Amber 4-7 | Green 8-10 | Notes: |
|-----------------|---|-------------------|------------|--------------|---------------|---|
| | Section 1 The Responsibilities of the Chief Finance Officer and Leadership Team | | | | | |
| A | <p>The leadership team demonstrates that the services provided by the authority provide value for money.</p> <p>Key questions</p> <p>Does the authority have a clear and consistent understanding of what value for money means to it and to its leadership team?</p> <p>Does the authority have suitable mechanisms in place to promote value for money at a corporate level and at the level of individual services?</p> <p>Is the authority able to demonstrate the action that it has taken to promote value for money and what it has achieved?</p> | Leadership | | 7 | | <p>Financial Implications in all Council reports.</p> <p>Consideration to be given to improve subsequent performance reporting from the implementation of the decisions.</p> |
| B | <p>The authority complies with the CIPFA Statement on the Role of the Chief Finance Officer in Local Government</p> <p>Key questions</p> <p>Is the authority's CFO a key member of the leadership team, involved in, and able to bring influence to bear on, all material business decisions?</p> <p>Does the CFO lead and champion the promotion and delivery of good financial management across the authority?</p> | Leadership | | | 8 | CFO part to leadership team and is a direct report to Chief Executive. |

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| | <p>Is the CFO suitably qualified and experienced?</p> <p>Is the finance team suitably resourced and fit for purpose?</p> | | | | | |
| | Section 2 Governance and Financial Management Style | | | | | |
| C | <p>The leadership team demonstrates in its actions and behaviours responsibility for governance and internal control.</p> <p>Key questions</p> <p>Does the leadership team espouse the Nolan principles?</p> <p>Does the authority have in place a clear framework for governance and internal control?</p> <p>Has the leadership put in place effective arrangements for assurance, internal audit and internal accountability?</p> <p>Does the leadership team espouse high standards of governance and internal control?</p> <p>Does the leadership team nurture a culture of effective governance and robust internal control across the authority?</p> | Assurance | | | 8 | <p>Constitution including officer scheme of delegation, financial regulations, and contract regulations.</p> <p>Council has effective Audit Committee and Internal Audit functions.</p> |
| D | <p>The authority applies the CIPFA/SOLACE Delivering Good Governance in Local Government: Framework (2016)</p> <p>Key questions</p> <p>Has the authority sought to apply the principles, behaviour and actions set out in the framework to its own governance arrangements?</p> | Accountability | | | 8 | <p>The Council has adopted the Code of Corporate Governance within its Constitution and prepares an annual governance statement to measure how the Council has complied with the Code. The Annual Governance Statement is</p> |

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| | <p>Does the authority have in place a suitable local code of governance?</p> <p>Does the authority have a robust assurance process to support its AGS?</p> | | | | | <p>reviewed by the Council's Audit Committee.</p> <p>The Constitution provides the main driver and framework for the Council's governance arrangements.</p> <p>Senior Leadership (political and officer) maintain oversight and accountability for ensuring good governance through a number of mechanisms, including monthly cross party Council Leadership Group meetings with Group Leaders, Chief Executive and Monitoring Officer.</p> <p>Consideration to be given to setting a formal plan at the start of each year to demonstrate how compliance will be met linked to AGS at year end.</p> |
| E | <p>The Financial Management Style of the authority supports financial sustainability</p> <p>Key questions</p> <p>Does the authority have in place an effective framework of financial accountability?</p> | Sustainability | | | 8 | <p>Finance staff part of leadership meeting and key project boards.</p> <p>LGA Peer Review and CIPFA Financial Resilience review.</p> |

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| | <p>Is the authority committed to continuous improvement in terms of the economy, efficiency, effectiveness and equity of its services?</p> <p>Does the authority's finance team have appropriate input into the development of strategic and operational plans?</p> <p>Do managers across the authority possess sufficient financial literacy to deliver services cost effectively and to be held accountable for doing so?</p> <p>Has the authority sought an external view on its financial style, for example through a process of peer review?</p> <p>Do individuals with governance and financial management responsibilities have suitable delegated powers and appropriate skills and training to fulfil these responsibilities?</p> | | | | | <p>Consideration of ongoing training around financial literacy of SLT and key staff.</p> |
| | <p>Section 3 Long to Medium Term Financial Management</p> | | | | | |
| | <p>The authority has carried out a credible and transparent Financial Resilience Assessment</p> <p>Key questions</p> <p>Has the authority undertaken a financial resilience assessment?</p> <p>Has the assessment tested the resilience of the authority's financial plans to a broad range of alternative scenarios?</p> <p>Has the authority taken appropriate action to address any risks identified as part of the assessment?</p> | <p>Assurance</p> | | <p>7</p> | | <p>Council has a rolling three-year MTRP and reviews its reserves on an annual basis.</p> <p>Council is aware of its financial resilience risks, but these could be documented more in a formal review.</p> |

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| G | <p>The authority has a Long-Term Financial Strategy for financial sustainability.</p> <p>Key questions</p> <p>Does the authority have a sufficiently robust understanding of the risks to its financial sustainability?</p> <p>Does the authority have a strategic plan and long-term financial strategy that adequately address these risks?</p> <p>Has the authority sought to understand the impact on its future financial sustainability of the strategic, operational and financial challenges that it might face (eg using a technique such as scenario planning)?</p> <p>Has the authority reported effectively to the leadership team and to members its prospects for long-term financial sustainability, the associated risks and the impact of these for short and medium-term decision making?</p> | Sustainability | | 7 | | <p>Council has a rolling three-year MTRP and rolling four-year capital plan. Future revisions of the plan need to include the planned net service reductions.</p> <p>The sensitivity of future risks could be documented more.</p> |
| H | <p>The authority complies with the CIPFA Prudential Code for Capital Finance in Local Authorities</p> <p>Key questions</p> <p>Has the authority prepared a suitable capital strategy?</p> <p>Has the authority set prudential indicators in line with the Prudential Code?</p> <p>Does the authority have in place suitable mechanisms for monitoring its performance against the prudential indicators that it has set?</p> | Standards | | 9 | | <p>Full compliance</p> <p>Consideration to be given to a wider SLT challenge on performance</p> |

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| I | <p>The authority has a rolling multi-year Medium Term Financial Plan consistent with sustainable service plans</p> <p>Key questions</p> <p>Does the authority have in place an agreed medium-term financial plan?</p> <p>Is the medium-term financial plan consistent with and integrated into relevant service plans and its capital strategy?</p> <p>Has the medium-term financial plan been prepared on the basis of a robust assessment of relevant drivers of cost and demand?</p> <p>Has the medium-term financial plan been tested for resilience against realistic potential variations in key drivers of cost and demand?</p> <p>Does the authority have in place a suitable asset management plan that seeks to ensure that its property, plant and equipment including infrastructure assets contribute effectively to the delivery of services and to the achievement of the authority's strategic aims?</p> | Sustainability | | 5 | | <p>Council has a rolling three-year MTRP and rolling four-year capital plan. Business plans have been reintroduced which will need to integrate to/from the MTRP.</p> <p>Need to include future year reductions into plan.</p> <p>Asset Management Plan and its management to be reviewed to ensure it is compliant.</p> |
| Section 4 The Annual Budget | | | | | | |
| J | <p>The authority complies with its statutory obligations in respect of the budget setting process.</p> <p>Key questions</p> <p>Is the authority aware of its statutory obligations in respect of the budget-setting process?</p> | Standards | | | 10 | Full compliance in relation to statutory requirements |

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| | <p>Has the authority set a balanced budget for the current year?</p> <p>Is the authority aware of the circumstances under which it should issue a Section 114 notice and how it would go about doing so?</p> | | | | | |
| K | <p>The budget report includes a statement by the Chief Finance Officer on the robustness of the estimates and a statement of the adequacy of the proposed financial reserves.</p> <p>Key questions</p> <p>Does the authority's most recent budget report include a statement by the CFO on the robustness of the estimates and a statement of the adequacy of the proposed financial reserves?</p> <p>Does this report accurately identify and consider the most significant estimates used to prepare the budget, the potential for these estimates being incorrect, and the impact should this be the case?</p> <p>Does the authority have sufficient reserves to ensure its financial sustainability for the foreseeable future?</p> <p>Does the report set out the current level of the authority's reserves, whether these are sufficient to ensure the authority's ongoing financial sustainability and the action that the authority is to take to address any shortfall</p> | Standards | | | 8 | Detailed review of reserves report presented. |
| | Section 5 Stakeholder Engagement and Business Plans | | | | | |

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| L | <p>The authority has engaged with key stakeholders in developing its long-term financial strategy, medium term financial plan and annual budget.</p> <p>Key questions</p> <p>How has the authority sought to engage with key stakeholders in developing its long-term financial strategy, its medium-term financial plan and its annual budget?</p> <p>How effective has this engagement been?</p> <p>What action does the authority plan to take to improve its engagement with key stakeholders?</p> | Transparency | | 6 | <p>Annual budget is subject extensive consultation and scrutiny. With some key services such as ASC and subsidiary companies there is ongoing longer-term planning.</p> <p>There is currently limited consultation on the longer-term financial strategy.</p> |
| M | <p>The authority uses a documented option appraisal methodology to demonstrate the VFM of its decisions</p> <p>Key questions</p> <p>Does the authority have a documented option appraisal methodology that is consistent with the guidance set out in IFAC/PAIB publication Project and Investment Appraisal for Sustainable Value Creation: Principles in Project and Investment Appraisal?</p> <p>Does the authority offer guidance to officers as to when an option appraisal should be undertaken?</p> <p>Does the authority’s approach to option appraisal include appropriate techniques for the qualitative and quantitative assessment of options?</p> <p>Does the authority’s approach to option appraisal include suitable mechanisms to address risk and uncertainty?</p> | Transparency | | 6 | <p>All major decisions are supported by a business case and a financial appraisal.</p> <p>Consideration could be given to formalising a standard format to be used.</p> |

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| | Does the authority report the results of option appraisals in a clear, robust and informative manner that gives clear recommendations and outlines the risk associated with any preferred option(s)? | | | | | |
| | Section 6 Monitoring Financial Performance | | | | | |
| N | <p>The leadership team takes action using reports enabling it to identify and correct emerging risks to its budget strategy and financial sustainability</p> <p>Key questions</p> <p>Does the authority provide the leadership team with an appropriate suite of reports that allow it to identify and to correct emerging risks to its budget strategy and financial sustainability?</p> <p>Do the reports cover both forward and backward-looking information in respect of financial and operational performance?</p> <p>Are there mechanisms in place to report the performance of the authority’s significant delivery partnerships such a contract monitoring data?</p> <p>Are the reports provided to the leadership team in a timely manner and in a suitable format?</p> <p>Is the leadership team happy with the reports that it receives and with its ability to use these reports to take appropriate action?</p> | Assurance | | 7 | | <p>Monthly reporting to managers and SLT. Quarterly reporting to leadership team and all members.</p> <p>Consideration of need to improve reporting to leadership team of subsidiary company performance</p> <p>Need to improve and link operational performance to financial performance</p> |
| O | The leadership team monitors the elements of its balance sheet which pose a significant risk to its financial sustainability. | Leadership | | 7 | | Key parts of the balance sheet that impact on the council’s operations are reviewed regularly such as treasury management – such as |

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| | <p>Key questions</p> <p>Has the authority identified the elements of its balance sheet that are most critical to its financial sustainability?</p> <p>Has the authority put in place suitable mechanisms to monitor the risk associated with these critical elements of its balance sheet?</p> <p>Is the authority taking action to mitigate any risks identified?</p> <p>Does the authority report unplanned use of its reserves to the leadership team in a timely manner?</p> <p>Is the monitoring of balance sheet risks integrated into the authority's management accounts reporting processes?</p> | | | | | <p>cashflow and CFR and non-treasury investments. Reserves are reviewed on an annual basis and link to budget and MTRP.</p> <p>Consideration to be given to a wider update on all aspects of balance sheet. Greater challenge of the highest and best use of the council non-current assets.</p> |
| | <p>Section 7 External Financial Reporting</p> | | | | | |
| | <p>The Chief Finance Officer has personal responsibility for ensuring that the statutory accounts provided to the local authority comply with the Code of Practice on Local Authority Accounting in the United Kingdom.</p> <p>Key questions</p> <p>Is the authority's CFO aware of their responsibilities in terms of the preparation of the annual financial statements?</p> <p>Are these responsibilities included in the CFO's role description, personal objectives and other relevant performance management mechanisms?</p> | <p>Accountability</p> | | | <p>9</p> | <p>Full compliance (to date)</p> <p>Consideration of including in objectives and performance management.</p> |

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|---|--|----------------|--|---|--|--|
| | Have the authority's financial statements hitherto been prepared on time and in accordance with the requirements of the Code of Practice on Local Authority Accounting in the United Kingdom? | | | | | |
| Q | <p>The presentation of the final outturn figures and variations from budget allow the leadership team to make strategic financial decisions.</p> <p>Key questions</p> <p>Is the authority's leadership team provided with a suitable suite of reports on the authority's financial outturn and on significant variations from budget?</p> <p>Is the information in these reports presented effectively?</p> <p>Are these reports focused on information that is of interest and relevance to the leadership team?</p> <p>Does the leadership team feel that the reports support it in making strategic financial decisions?</p> | Accountability | | 7 | | <p>Outturn information is presented to leadership team and where appropriate future budgets are adjusted.</p> <p>Consideration to be given to a documented challenge of a service's outturn position both in relation to its net cost but also the outcomes achieved.</p> |

DRAFT

Meeting: Audit Committee

Date: 28th July 2021

Wards Affected: All Wards in Torbay

Report Title: Policy for the Prevention of the Facilitation of Tax Evasion

Is the decision a key decision? No

When does the decision need to be implemented?

Cabinet Member Contact Details: Councillor Darren Cowell,
Darren.Cowell@torbay.gov.uk

Director/Assistant Director Contact Details: Martin Phillips Director of Finance,
martin.phillips@torbay.gov.uk

1. Purpose of Report

- 1.1 The Criminal Finances Act 2017 Part 3 created the Corporate Offences of Failure to Prevent Facilitation of Tax Evasion. Under this Act, an offence may be committed by the Council where it fails to prevent an 'associated person' criminally facilitating the evasion of a tax, whether the tax evaded is owed in the UK or in a foreign country.
- 1.2 In response to the requirements of the Act, a 'Prevention of the Facilitation of Tax Evasion' Policy (referred hereinafter as 'the Policy') document has been prepared and is appendix 1 to this report.

2. Reason for Proposal and its benefits

- 2.1 To mitigate the risk of prosecution for the corporate criminal offences of the facilitation of tax evasion, the Council would need to prove that reasonable prevention procedures are in place. This would enable the Council to raise a defence.
- 2.2 The Policy demonstrates the Council's commitment to adopting a zero tolerance to all forms of tax evasion.
- 2.3 During 2021/22 the Council commits to undertake a risk assessment to identify those areas of the Council's activities where risk is highest and to implement the measures set out in the Policy.
- 2.4 If the Council were unable to prove that it had in place, reasonable prevention procedures, the penalties for this offence include: -

- Unlimited financial penalties
- Ancillary orders e.g., confiscation orders
- Reputational damage

3. Recommendation(s) / Proposed Decision

3.1 That the Audit Committee approve the proposed:

- **Prevention of the Facilitation of Tax Evasion Policy**

As set out in Appendix 1 to this report.

Note: During 2021/22 the Council commits to undertake a risk assessment to identify those areas of the Council's activities where risk is considered high and to implement the measures set out in the Policy.

Appendices

Appendix 1: Prevention of the Facilitation of the Tax Evasion Policy

Supporting Information

1. Introduction

- 1.1 The proposed Prevention of the Facilitation of Tax Evasion Policy is set out in Appendix 1.

2. Options under consideration

- 2.1 As set out in Appendix 1

3. Financial Opportunities and Implications

- 3.1 As set out in Appendix 1

4. Legal Implications

- 4.1 As set out in Appendix 1

5. Engagement and Consultation

- 5.1 N/A

6. Purchasing or Hiring of Goods and/or Services

- 6.1 N/A

7. Tackling Climate Change

- 7.1 N/A

8. Associated Risks

- 8.1 As set out in Appendix 1.

During 2021/22 the Council commits to undertake a risk assessment to identify those areas of the Council's activities where risk is considered high and to implement the measures set out in the Policy.

Prevention of the Facilitation of Tax Evasion Policy

July 2021



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For more information please contact financial.services@torbay.gov.uk

1 Introduction

Torbay Council has adopted a zero tolerance to all forms of tax evasion, whether under UK law or the law of a foreign country, and is committed to prevent the facilitation of tax evasion. This Policy has the support of Senior Officers and Members of the Council.

Tax evasion and its facilitation are already a criminal offence, but it had been difficult to attribute criminal liability to a corporation where an offence has occurred. The Corporate Criminal Offence (CCO) legislation came into effect in 2017 with the aim of overcoming difficulties of attributing criminal liability to relevant bodies for the criminal acts of employees, agents or those that provide services on their behalf. Under the Criminal Finances Act 2017 (hereinafter referred to as 'the Act') a "Relevant body" means a body corporate or partnership (wherever incorporated or formed), local authorities fall into this definition.

The CCO legislation does not radically alter what is criminal but focuses on who is held to account for acts contrary to law. This is by focussing on the failure to prevent the crimes of those who act on behalf of the Council. An offence may be committed where a 'relevant body' fails to prevent an 'associated person' criminally facilitating the evasion of a tax, whether the tax evaded is owed in the UK or in a foreign country.

The CCO legislation is aimed at offences committed by those who act for or on behalf of the Council, the legislation does not hold the Council to account for offences by its customers.

The penalties for this offence will include:-

- Unlimited financial penalties
- Ancillary orders e.g., confiscation orders

The Council would also suffer reputational damage, were it to be found guilty of such an offence.

If the Council can demonstrate that it has put in place a system of reasonable procedures that identifies and mitigates the risk of facilitating tax evasion, then prosecution is unlikely, as it may be able to raise a defence.

All subsidiary companies of Torbay Council should adopt a similar Policy.

2 The Criminal Finances Act 2017

Criminal Finances Act 2017 Part 3 created the Corporate Offences of Failure to Prevent Facilitation of Tax Evasion.

Tax Evasion

Tax evasion is the illegal non-payment or under-payment of taxes, usually as the result of making a false declaration (or an omission of declaration) of taxes due to the relevant tax authorities.

By contrast tax avoidance as described by * HM Revenue and Customs (HMRC) is:

Tax avoidance involves bending the rules of the tax system to gain a tax advantage that Parliament never intended. It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law.

Importantly, the corporate criminal offence of facilitation only applies to tax evasion. A third party must be found guilty of tax evasion before the Council can be found to have facilitated it.

Examples of Tax Evasion

- *You become aware, in the course of your work, that a third party has made or intends to make a false statement relating to tax; has failed to disclose income or gains to, or to register with, HMRC; has delivered or intends to deliver a false document relating to tax; or has set up or intends to set up a structure to try to hide income, gains or assets from a tax authority.*
- *You become aware, in the course of your work that a third party has deliberately failed to register for VAT (or the equivalent tax in any relevant non-UK jurisdiction) or failed to account for VAT.*
- *A third party requests payment in cash and/or refuses to provide an invoice or receipt for a payment made.*
- *You become aware, in the course of your work that a third party working for the Council as an employee asks to be treated as a self-employed contractor, but without any material changes to their working conditions.*

Acting in the Capacity of a Person Associated with the Council

The Council can only be guilty of an offence in this regard, if an

- employee,
- agent
- or other person who performs services for or on behalf of the Council,

facilitates a tax evasion offence.

*[Tax avoidance: an introduction - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The associated person can be an individual or a legal entity.

Where an employee criminally facilitates tax evasion in their private capacity they commit a tax evasion facilitation offence. In these circumstances, the Council would not be liable as an employer.

Similarly, a third party could be acting for multiple organisations. The offence is only committed where a tax evasion facilitation offence is committed by the person acting in the capacity of a person associated to the Council, that is undertaken 'for or on behalf of' the Council. Any activity of the associated person beyond that relationship, for example on behalf of another relevant body or carried out in their private capacity, as mentioned above, would not lead to liability for the Council.

3 Prevention

To mitigate the risk of prosecution for the corporate criminal offence of the facilitation of tax evasion, the Council would have to prove that it had in place, reasonable prevention procedures. This would enable the Council to raise a defence.

HM Revenue and Customs have produced guidance to help the Council put in place preventative processes and procedures. The guidance contains six guiding principles:

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitor and review

Risk assessment

The Council adopts and is committed to a strong anti-fraud and anti-tax evasion culture. Members and Senior Officers should consider risks from the 'Failure to prevent the facilitation of Tax Evasion' within the established risk assessment procedures and add this to the Council's risk register.

Proportionality of risk-based prevention procedures

Members and Senior Officers provide a high-level commitment to risk-based prevention procedures. The Council has governance and internal control procedures in place to meet the Council's statutory requirements and duties. This Policy adds to the Council's existing policies including the 'Whistle Blowing Policy' and 'Counter Fraud & Corruption Policy'.

Top level commitment

This Policy has been approved by the Council's Senior Leadership Team and the Council's Audit committee.

Due Diligence

Reasonable care and caution is exercised when processing all transactions, particularly high value/ high risk area payments.

Communication and training

All staff, especially those involved in processing and approving financial transactions, will be made aware of this Policy. The Policy will be available on the Council's website and the Council's intranet. On-line training will be incorporated into the Council's Fraud Awareness training. This training is mandatory for all staff. Further training will be developed for employees with the highest risk of exposure e.g., procurement, invoice processing, property transactions, BACS payments, payroll etc.

By the Council putting in place reasonable procedures that identifies and mitigates the risk of facilitating tax evasion, then prosecution is unlikely as it will be able to raise a defence.

4 Policy Statement

Tax Evasion

Torbay Council has a zero tolerance approach to all forms of tax evasion whether under UK law or under the law of any foreign country. Employees of the Council, its agents and contractual associates must not undertake any transactions which:

- Causes the Council to commit a tax evasion offence; or
- Facilitate a tax evasion offence by a third party.

Objective of the Policy

The Council aims to conduct its financial affairs in a law abiding way and will not tolerate either the commitment or facilitation of tax evasion. This Policy provides a framework for employees and associates to understand and implement arrangements to ensure compliance, identify potential breach and report as outlined in Section 6 below.

The Council requires that all relevant persons:

- Act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible
- Comply with the spirit, as well as the letter, of the law and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

Scope of the Policy

This Policy applies to all Council's activities. Responsibility to control the risk of tax evasion occurring resides at all levels of the Council. It does not rest solely within Finance, but in all business services and corporate functions.

This Policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members, volunteers, and consultants.

Staff responsibilities

The prevention, detection, and reporting of all forms of financial irregularity, including suspected tax evasion, are the responsibility of all those employed by the Council or under its control ("associated persons"). All staff are required to avoid activity that breaches this Policy.

As individuals you must:

- Ensure that you read, understand, and comply with this Policy
- Raise concerns as soon as practicable, if you believe or suspect that a conflict with this Policy has occurred or may occur in the future.

Failure to comply with the obligations detailed in this Policy, may result in disciplinary action for employees and the termination of arrangements with associates.

Should employees or associates be concerned that another employee or associate is facilitating a third party's tax evasion whilst acting 'for and on behalf of the Council', they should report this as shown in Section 6 below.

5 Torbay Council's Commitment

The Council commits to:

- Setting out a clear anti-tax evasion facilitation Policy and keeping it up to date
- Making all employees aware of their responsibilities to adhere strictly to this Policy.
- Raising awareness of the risks of tax evasion with employees so that they can recognise and avoid occurrences of potential tax evasion by themselves and others
- Undertaking a risk assessment to identify those areas of the Council's business where risk is considered to be highest
- Targeted training of services where the perceived risk is higher
- Promoting good ethical behaviour by employees in all of its forms
- Encouraging its employees to be vigilant and to report any suspicions of tax evasion, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- Investigating instances of alleged tax evasion
- Referring investigations to the appropriate authorities where it is appropriate to do so
- Taking firm and vigorous action against any individual(s) involved in tax evasion, or the facilitation of it
- Providing information to all employees on how to report breaches and suspected breaches of this policy
- Including appropriate clauses in contracts to prevent tax evasion.

The Council seeks to maintain relevant procedures, including top-level commitment to tackling tax evasion and effective communication, including training.

6 Reporting a breach or raising a concern

Within Torbay Council everyone has a responsibility to help detect, prevent and report instances of tax evasion. If you have a concern regarding a suspected instance of the facilitation of tax evasion, you can:

- Engage the Council's Whistleblowing Policy:-
[Whistleblowing \(torbay.gov.uk\)](https://www.torbay.gov.uk/whistleblowing)
- Alternatively, use the Council's Fraud Reporting process:-
[Fraud within or against the council - Torbay Council](#)

This information is also available on the Council's [Fraud](#) intranet site.

Anonymous concerns can be submitted, although if you have missed vital information in your submission remaining anonymous may prevent an investigation commencing or continuing.

7 Policy Review

The Director of Finance (s.151 Officer) and the Council's Audit Committee will ensure the continuous review and amendment of this Policy, to ensure that it remains compliant with good practice and legislative requirements.

Useful links:

[Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion \(publishing.service.gov.uk\)](#)

[Criminal Finances Act 2017, Part 3 – Corporate Offences of Failure to Prevent Facilitation of Tax Evasion](#)

Meeting: Audit Committee

Date: 28 July 2021

Wards Affected: All

Report Title: HR Investigations and Whistleblow

Cabinet Member Contact Details: Councillor Christine Carter, Cabinet Member for Community and Customer Services, Christine.Carter@torbay.gov.uk

Director/Assistant Director Contact Details: Anne-Marie Bond, Chief Executive
Anne-Marie.Bond@Torbay.gov.uk

1. Purpose of Report

- 1.1 The purpose of this report is to provide a high level summary of the number of HR investigations and Whistleblow investigations.
- 1.2 Exempt Appendix 1, sets out such an overview.

2. Reason for Proposal and its benefits

- 2.1 To provide a greater level of detail to Audit Committee.
- 2.2 The proposals in this report help us to deliver this ambition by:
 - *thriving people; ensuring that our employees can raise concerns in an environment where they feel safe to do so and that the organisation and employee's learns from concerns that have been raised, and therefore we have a workforce that thrive*
 - *Council fit for the future; ensuring that the organisation is compliant with employment law and legislation, that we are a learning organisation with a good reputation as an employer where people wish to come and our employment practice supports the council in being fit for the future through our People plan and workforce planning activity..*
 - *the Council's responsibilities as corporate parents; ensuring that all our employment practices underpin our responsibility as a corporate parent and that all of our employees understand their obligations in this regard, regardless of role.*

3. Recommendation(s) / Proposed Decision

- (i) That Audit Committee note the contents of Exempt Appendix 1, and give consideration to any further information or action that they require.

Appendices

Appendix 1: Overview of HR Investigations and WB Investigations

Background Documents

None

Report Clearance

Supporting Information

1. Introduction

1.1 For Audit Committee to consider the contents of appendix 1.

2. Options under consideration

2.1 *To consider the contents of appendix 1.*

3. Financial Opportunities and Implications

None.

4. Legal Implications

4.1 Failure to follow due process in respect of HR investigations and WB concerns could result in Employment claims for the Council.

5. Engagement and Consultation

5.1 *None required for the purpose of this report.*

6. Purchasing or Hiring of Goods and/or Services

6.1 *N/A*

7. Tackling Climate Change

7.1 *N/A*

8. Associated Risks

8.1 *N/A*

Equality Impacts N/A

| 9. | Identify the potential positive and negative impacts on specific groups | | | |
|----|---|-----------------|--------------------------------------|------------------------|
| | | Positive Impact | Negative Impact & Mitigating Actions | Neutral Impact |
| | Older or younger people | | | No differential impact |
| | People with caring Responsibilities | | | No differential impact |
| | People with a disability | | | No differential impact |
| | Women or men | | | No differential impact |
| | People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i> | | | No differential impact |
| | Religion or belief (including lack of belief) | | | No differential impact |
| | People who are lesbian, gay or bisexual | | | No differential impact |
| | People who are transgendered | | | No differential impact |
| | People who are in a marriage or civil partnership | | | No differential impact |
| | Women who are pregnant / on maternity leave | | | No differential impact |

| | | | |
|------|---|----------------------|------------------------|
| | | | |
| | Socio-economic impacts (Including impact on child poverty issues and deprivation) | | No differential impact |
| | Public Health impacts (How will your proposal impact on the general health of the population of Torbay) | | No differential impact |
| 10.. | Cumulative Council Impact (proposed changes elsewhere which might worsen the impacts identified above) | No cumulative impact | |
| 11. | Cumulative Community Impacts (proposed changes within the wider community (inc the public sector) which might worsen the impacts identified above) | No cumulative impact | |

Document is Restricted

Budget Outturn Monitoring 2020/21 – Quarter Four - Outturn Report of the Overview and Scrutiny Board

**Report to Cabinet on 24 August 2021 and Audit Committee on 28
July 2021**

Background

The Overview and Scrutiny Board met on 14 July and considered the budget monitoring outturn report for 2020/2021 which provided a high-level budget summary of the Council's revenue and capital position, based on figures on 31 March 2021. The report was discussed at the Cabinet meeting held on 13 July 2021 and was presented to the Council meeting on 29 July 2021.

The Overview and Scrutiny Board made the following recommendations:

Recommendation to Cabinet:

- 1) That the Cabinet be recommended to request that the Director of Place in consultation with the Chairwoman of the Harbour Committee works with the Section 151 Officer and the Cabinet Member for Finance to take the necessary steps to increase the Harbour Reserve Fund to a level that is financially acceptable; and

Recommendation to Audit Committee:

- 2) That the Audit Committee be requested to consider a report on the detailed financial reporting and monitoring of the Council's wholly owned companies.