TORBAY COUNCIL

Torbay Council's Constitution

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If you require this document in a different format or language, please contact
Governance Support telephone 01803 207087
e-mail governance.support@torbay.gov.uk

Introduction to the Constitution and how the Council operates

(References: Part 1A of the Local Government Act 2000; Localism Act 2011 (Commencement No.2 and Transitional and Saving Provisions) Order 2012/57)

The Borough of Torbay is situated on the south west coast of England and consists of three towns Brixham, Paignton and Torquay. Torbay is divided into 16 areas which are called wards.

Torbay Council's vision, through it's Community and Corporate Plan, is for a healthy, happy and prosperous Torbay. This will be achieved through the following strategic themes:

- Community and People;
- Pride in Place; and
- Economic Growth.

The Council's Constitution

The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose.

What is in the Constitution?

The Constitution is divided into 15 Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules (called Standing Orders) and protocols at the end of the document.

Article 1 sets out the Council's priorities and describes the principles of decision-making.

Articles 2 – 15 explain the rights of local people and how the key parts of the Council operate. These are:

a) Members of the Council (Article 2)

b) Local people and the Council (Article 3)

c) The Council (Article 4)

d) Overview and Scrutiny (Article 5)

e) The Leader and Cabinet (Article 6)

f) Regulatory and other committees (Article 7)

g) Area committees (Article 8)

h) Joint arrangements (Article 9)

i) Officers (Article 10)

j) Decision-making (Article 11)

k) Finance, contracts and legal matters (Article 12)

l) Review and revision of the Constitution (Article 13)

m) Suspension, interpretation and publication of the Constitution (Article 14)

n) Health and Wellbeing Board (Article 15)

How the Council operates

The Council comprises 36 Councillors. The regular election of Councillors is held on the first Thursday in May every four years. Councillors are democratically elected and accountable to residents in their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

In taking office, Councillors have to agree to follow a Code of Conduct for Members to ensure high standards in the way they undertake their duties. The Standards Committee oversees and promotes high standards of conduct by all Councillors.

All Councillors meet together as the Council. Meetings of the Council are usually open to the public. Here Councillors decide the Council's framework of policies and set a budget each year. The Council appoints the Leader of the Council at the first Council meeting after an all-Council election. The Leader of the Council appoints a Deputy Leader of the Council. The Leader and Deputy Leader hold office for the next four years. The Council also appoints an Overview and Scrutiny Co-ordinator and Overview and Scrutiny Lead Members, plus a number of Regulatory and Other committees.

Within the Council, the group of Councillors which provides the leadership of the Council is called the 'Administration'. The Administration is responsible for proposing the Council's budget and policy framework and for making major decisions within the budget and policy framework set by the Council. The Administration works through the Cabinet and includes the Leader of the Council and normally holds the positions of Civic Mayor and Deputy Civic Mayor.

The Leader of the Council is responsible for appointing between two and nine Councillors to be members of the Cabinet and for deciding whether to allocate any areas of responsibility to these Councillors.

Those Councillors who are not part of the Administration, or the Cabinet are known as the 'Opposition'. The Opposition of the Council provides constructive challenge to the Administration and holds decision-makers to account. The Opposition works through Shadow Cabinet and normally holds the Overview & Scrutiny Co-Ordinator and the Audit Committee Chair positions.

A structure chart showing the relationship between the Council, the Cabinet and Overview and Scrutiny and other committees can be found at the end of this document.

How decisions are made

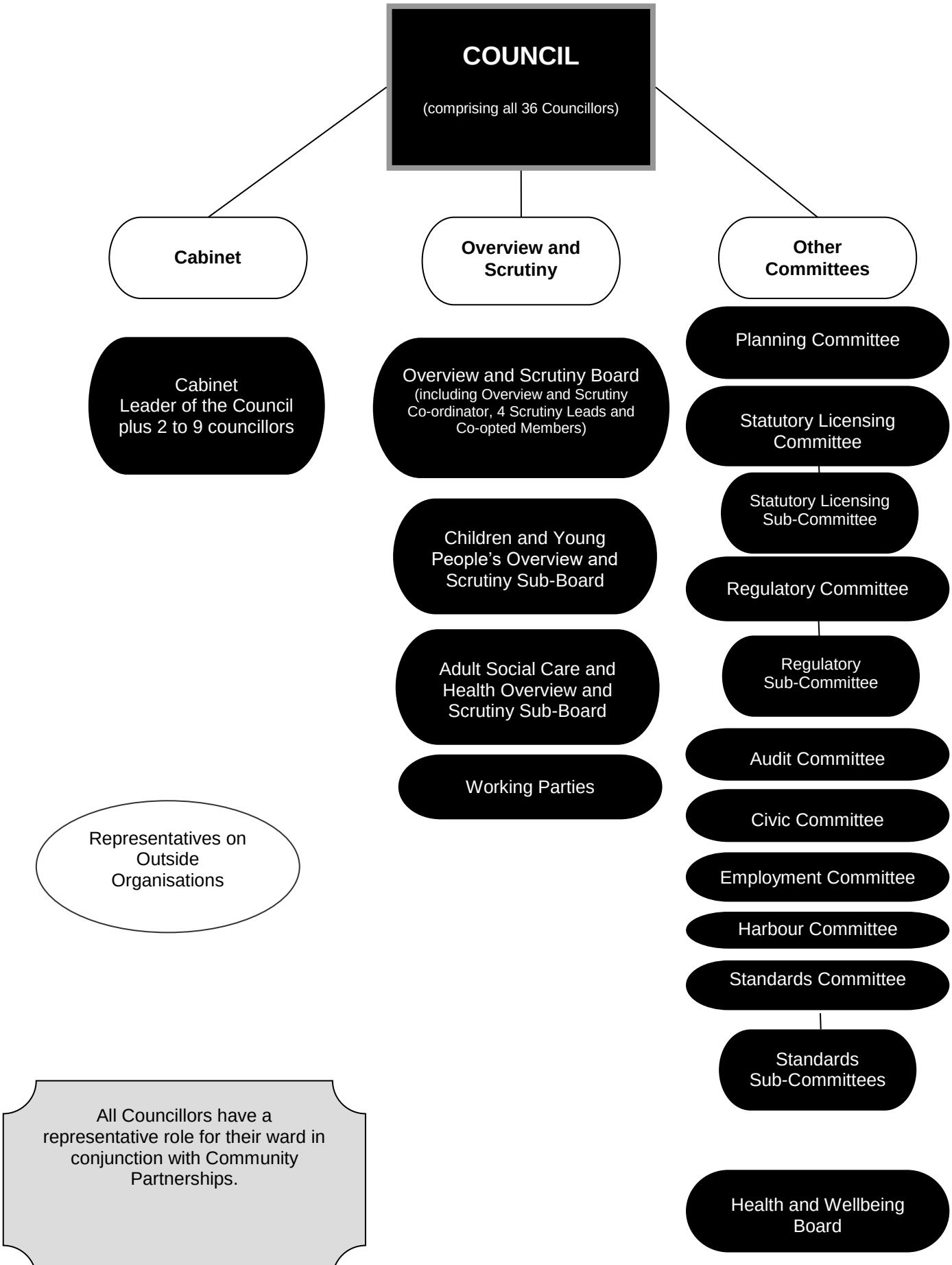
The Cabinet is responsible for major decisions including key policy matters within a framework set by Full Council. These are referred to as "Executive Functions". When major decisions are to be discussed or made, these are published in the Forward Plan in so far as they can be anticipated. The Cabinet takes their decisions at meetings of the Cabinet and these meetings will generally be open for the public to attend except where exempt or confidential matters are being discussed. The Cabinet have to make decisions

which are in line with the policies and budget set by Council. If they wish to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide. The Council has an overview and scrutiny process which provides a 'critical friend' challenge to cabinet policy makers and decision making.

The Council's staff

The Council employs staff (called officers) to give advice, implement the Councillors' decisions and manage the day-to-day delivery of its services. Officers make operational, day to day decisions in accordance with major policy guidelines and budget decisions made by the Cabinet and Councillors, following consultation with them when appropriate. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A local protocol governs the relationships between officers and members of the Council which can be found in Part 5 of the Council's Constitution.

For further information on how the Council operates and the information set out in this Constitution, please contact Governance Support (telephone 01803 207087 or e-mail governance.support@torbay.gov.uk).


COUNCIL
(comprising all 36 Councillors)
Cabinet
Overview and Scrutiny
Other Committees
Cabinet
Leader of the Council plus 2 to 9 councillors
Overview and Scrutiny Board
(including Overview and Scrutiny Co-ordinator, 4 Scrutiny Leads and Co-opted Members)
Children and Young People's Overview and Scrutiny Sub-Board
Adult Social Care and Health Overview and Scrutiny Sub-Board
Working Parties
Planning Committee
Statutory Licensing Committee
Statutory Licensing Sub-Committee
Regulatory Committee
Regulatory Sub-Committee
Audit Committee
Civic Committee
Employment Committee
Harbour Committee
Standards Committee
Standards Sub-Committees
Representatives on Outside Organisations
All Councillors have a representative role for their ward in conjunction with Community Partnerships.
Health and Wellbeing Board

Article 1 – The Constitution

(References: Section 37, Local Government Act 2000,
The Local Government Act 2000 (Constitutions) (England) Direction 2000)

1.01 The Constitution

This Constitution, and all its appendices, is the Constitution of the Council of the Borough of Torbay. The Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.02 Purpose of the Constitution

The Council aims to deliver efficient, transparent and accountable decision-making. In light of this, the purpose of this Constitution is:

(i) To enable the Council to provide clear leadership to the community in partnership with local people and public, private, voluntary and community organisations.

(ii) To support the active involvement of local people in the process of local authority decision-making.

(iii) To help councillors represent their constituents more effectively.

(iv) To enable decisions to be taken efficiently and effectively.

(v) To create a powerful and effective means of holding decision-makers to public account.

(vi) To ensure that no one will review or scrutinise a decision made by them directly or made by a body of which they were a member at the time the decision was made.

(vii) To ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions.

(viii) To provide a means of improving the delivery of services to the community.

1.03 Interpretation and review of the Constitution

Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.

The Council will regularly monitor and evaluate the operation of the Constitution as set out in this Article and will take into account comments on its operation made to the Monitoring Officer who is responsible for maintaining and improving its effectiveness. Article 13 sets out further details of the review and revision of the Constitution.

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Article 2 – Members of the Council

(References: Part 1, Part VA and Sections 79 and 80, Local Government Act 1972,
Section 18, Local Government and Housing Act 1989 and regulations thereunder,
Section 7, Superannuation Act 1972 and regulations thereunder,
Section 9H Local Government Act 2000 and regulations thereunder)

2.01 Composition and eligibility

(a) Composition

The Council is comprised of 36 members (otherwise called councillors). Councillors are elected by the registered voters of each ward in accordance with a scheme drawn up by the Electoral Commission and approved by the Secretary of State.

The Borough of Torbay is divided into 16 Wards with either one, two or three councillors elected to serve each ward.

(b) Eligibility

To be eligible to stand for election as a councillor a person must be over 18 years of age and a British or Commonwealth subject or a citizen of the Republic of Ireland or the European Union and either:

(i) be registered to vote in Torbay;
(ii) have occupied, as owner or tenant, any land or premises in the area of Torbay during the whole twelve months preceding the day on which he/she is nominated as a candidate;
(iii) have resided in the area of Torbay during the whole twelve months preceding the day on which he/she is nominated as a candidate; or
(iv) have his/her principal or only place of work in the area of Torbay in the twelve months preceding the day on which he/she is nominated as a candidate.

Disqualifications for the office of councillor (as set out in section 79 and 80 of the Local Government Act 1972) include:

(i) ceasing to be a local government elector for the Borough when that was his/her sole qualifying criteria for election to office;
(ii) holding a paid office by Torbay Council or politically restricted post elsewhere within the meaning of Part 1 of the Local Government and Housing Act 1989;
(iii) bankruptcy;
(iv) having been sentenced to a term of imprisonment of not less than three months during the five years preceding an election; or
(v) being disqualified under any enactment relating to corrupt or illegal practices.

2.02 Election and terms of councillors

The regular election of councillors will be held on the first Thursday in May every four years with the next election being in 2023. The terms of office of councillors will start on the fourth day after the date of the election that they were elected and will finish on the fourth day after the date of the next regular election. The calculation of time for the fourth day includes weekends but not bank holidays (Section 243(1) of the Local Government Act 1972).

2.03 Vacation of Office by Failure to Attend Meetings

Section 85 of the Local Government Act 1972 requires (subject to exceptions) that a member of a local authority shall cease to be a member if he or she fails to attend any meeting of the Council or its committees or sub-committees or a meeting of the Cabinet within 6 months of the date of his or her last attendance. The Council has resolved that periods when a councillor is in receipt of a medical certificate, shall not be counted in the calculation of the period of six months for the purposes of Section 85 of the Local Government Act 1972.

The provisions in this Article 2.03 also relate to parent governor representatives on the Overview and Scrutiny Board by virtue of Regulation 7(5) of the Parent Governor Representatives (England) Regulations 2001 (SI 478/2001).

2.04 Roles and functions of all councillors

The roles and duties of all councillors can be found in their job descriptions in Part 6 of this Constitution.

2.05 Political Groups

A political group shall be treated as constituted when written notification has been delivered to the Head of Governance Support in writing which:

a) is signed by two or more Members who wish to be treated as a political group. A political group will cease to be a group where there are less than two Members, in such case the remaining Member will be known as 'Independent' unless they confirm another name in writing to the Head of Governance Support;

b) names the political group; and

c) names one member of the group who has signed the notice to act as its leader and may name one other member who is authorised to act in the place of the leader when he is unable to act (the deputy leader).

The name of the group or the name of the person who is leader or deputy leader may be changed by a further notice in writing delivered to the Head of Governance Support and signed:

a) in the case of a change in the name of the group or the deputy leader, the notice must be signed by the leader of the group or a majority of the members of the group;

b) in the case of a change of the leader of the group, the notice must be signed by a majority of the members of the group.

Groups who are not aligned to a main political party or independent councillors that wish to include any element of a political party name within their description/name, shall not do so without written confirmation by the Party concerned being delivered to the Monitoring Officer.

A Member shall cease to be treated as a member of a political group when:

a) they cease to be a member of the authority;

b) they have notified the Head of Governance Support in writing that they no longer wish to be treated as a member of the group;

c) there is delivered to the Head of Governance Support a notice under The Local Government (Committees and Political Groups) Regulation 1990 section 8 or 9(b) signed by the person whereby a new political group is constituted or he joins another political group; or

d) when a notice in writing, signed by the majority of the members of the group, stating that they no longer wish the person/s to be treated as a member of that group is delivered to the Head of Governance Support.

2.07 Political Proportionality

In accordance with the Local Government and Housing Act 1989, local authorities are under a duty to ensure that the nominations to the seats on the Council's Committees are made in accordance with the size of each group, unless alternative arrangements are notified to all members and agreed without any member voting against them. The Council is required to observe the following principles as far as it is reasonably practicable:

a) that not all seats on the body are allocated to the same group;

b) that the majority of seats on the body are allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership;

c) Subject to a) and b) above, that the number of seats on the ordinary committees of a relevant authority which area allocated to each political group bears the same proportion to the total of all seats on the ordinary committees of that authority as is borne by the number of Members of that group to the membership of the authority; and

d) Subject to paragraphs a) and c) above, that the number of seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.

The composition of the Cabinet and its committees, sub-committees or working parties need not reflect the political balance of the Council as a whole (Article 6 provides further details as to the composition of the Cabinet) and therefore is also excluded from the requirements of political proportionality.

2.08 Conduct

Councillors are subject to the Members' Code of Conduct and the Protocol on Member/Officer Relations (as set out in Part 5 of the Constitution).

2.09 Allowances

Councillors and co-opted members will be entitled to receive allowances in accordance with the Members' Allowances Scheme set out in Part 6 of this Constitution.

Article 3 – Local People/Organisations and the Council

3.01 The rights of local people and organisations

The rights of local people and organisations to information and to participate are explained in more detail in the Standing Orders in relation to Access to Information set out in Part 4 of this Constitution. However, in brief, local people have the following rights:

(a) Voting and petitions

Local people on the electoral roll for Torbay have the right to vote to elect their ward councillors and to sign a petition to request a referendum on whether to change the form of governance arrangements. A governance referendum was held on 5 May 2016 and residents chose to change the form of governance from an elected mayor and cabinet to a leader and cabinet. The next governance referendum cannot be held until 5 May 2026.

(b) Information

Local people have the right to:

(i) attend meetings of the Council and its committees and any decision making meetings of the Cabinet except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;

(ii) find out from the Forward Plan what Key Decisions will be taken and when;

(iii) see reports, background papers and the record of decisions made by the Council, the Cabinet and the Overview and Scrutiny Board and other committees; and

(iv) inspect the Council's accounts and make their views known to the external auditor.

(c) Participation

Local people have the right to participate in the Council's question time sessions. The rules governing these sessions are set out in the Standing Orders in relation to Council Meetings. Local people also have the right to contribute, by invitation, to investigations by the Overview and Scrutiny Board, its sub-committees and working parties. Local people will be encouraged to participate in the work of the Community Partnerships.

(d) Complaints

Local people have the right to complain to:

(i) the Council itself under its complaints scheme;

(ii) the Ombudsman after using the Council's own complaints scheme; and

(iii) the Council's Monitoring Officer about a breach of the Members' Code of Conduct.

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Article 4 – The Council

(Reference: Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended)
Sections 3, 5, 245 and Schedule 2, Local Government Act 1972
Schedule 3, Local Government Act 2000)

4.01 Meanings

(a) Policy Framework

The Policy Framework consists of significant and overarching major plans and strategies and is made up of the following:

(i) Adult Social Care Strategy;

(ii) Community Engagement and Empowerment Strategy;

(iii) Corporate Asset Management Plan (reviewed every five years);

(iv) Corporate Capital Strategy (approved annually as part of the budget setting process);

(v) Corporate Parenting Strategy;

(vi) Corporate Plan (incorporating equalities objectives);

(vii) Domestic Abuse and Sexual Violence Strategy;

(viii) Economic Regeneration Plan (incorporating the Destination Management Plan and Cultural Strategy);

(ix) Housing Strategy (incorporating the Homelessness Strategy);

(x) Inclusion Strategy for Torbay;

(xi) Gambling Act Policy/Statement of Principles;

(xii) Joint Health and Wellbeing Strategy (incorporating the Children's and Young People's Plan);

(xiii) Licensing Policy;

(xiv) Plans and Strategies which together comprise the Development Plan (incorporating the Port Master Plan);

(xv) Review of Reserves (approved annually as part of the budget setting process);

(xvi) Strategic Agreement between Torbay and South Devon NHS Foundation Trust and Torbay Council/Torbay and South Devon Clinical Commissioning Group;

(xvii) Treasury Management Strategy (incorporating the Annual Investment Strategy and Minimum Revenue Provision Policy) (approved annually as part of the budget setting process);

(xviii) Resource Management and Waste Strategy;

(xiv) such other plans and strategies which the Council may decide shall be added

to the Framework in accordance with Regulation 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

(b) Budget

The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirements, investments, its capital expenditure (including the funding of that expenditure as approved by Council) and the setting of virement limit.

4.02 Functions of the Council

Only the Council will exercise the following functions:

(i) adopting and changing the Constitution other than in line with the provisions as set out in this Constitution,

(ii) approving or amending the Policy Framework and the budget,

(iii) subject to the urgency procedure contained in the Standing Orders in relation to Access to Information in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the Policy Framework or the budget where the decision-maker is minded to make it in a manner which would be contrary to the Policy Framework or contrary to or not wholly in accordance with the budget,

(iv) establishing and agreeing and/or amending the terms of reference for all Council committees (including the Overview and Scrutiny Board), deciding on their composition and making appointments to them,

(v) appointing and removal of the Leader of the Council,

(vi) appointing the Overview and Scrutiny Co-ordinator and any Overview and Scrutiny Lead Members,

(vii) appointing representatives to outside organisations unless the appointment is an executive function or has been delegated by the Council,

(viii) adopting a Members' Allowances Scheme (for the members and co-opted members of the Council),

(ix) changing the name of the area and conferring the title of Honorary Alderman, Honorary Freeman or Freedom of the Borough,

(x) confirming the appointment of the Head of the Paid Service, the Monitoring Officer, Section 151 Officer, the Director of Adults and Community Services and the Director of Children's Services,

(xi) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills,

(xii) all local choice functions set out in Part 3 of this Constitution which the Council decides shall be undertaken by itself rather than the Cabinet, and

(xiii) all other matters which, by law, must be reserved to Council.

4.03 Council meetings

There are three types of Council meeting:

(i) the annual meeting;

(ii) ordinary meetings; and

(iii) extraordinary meetings

and they will be conducted in accordance with the Standing Orders in relation to Council Meetings in Part 4 of this Constitution.

4.04 Responsibility for functions

Part 3 of this Constitution (Responsibility for Functions) gives details of which body or individual has responsibility for all of the Authority's functions.

4.05 Guiding Principles for Members

When carrying out functions they are responsible for, Members are expected to act as follows:

- be clear about the limits of their role in developing policy;
- work collectively with the Leader of the Council and the Cabinet to help them develop the most coherent set of policies for the local people;
- enable officers to develop priorities into clear, costed plans of action which are shared and agreed with partners;
- adopt leadership styles which are open, inclusive, and engender trust from staff, other partners, and the public; and
- act as ambassadors for the Council in the wider area and with partners.

4.06 Role and function of the Civic Mayor of the Council

The Civic Mayor shall have precedence in the Borough as first citizen (but not so as to prejudicially affect His Majesty's royal prerogative) and Section 3(4) of the Local Government Act 1972 (as amended) shall apply and hold the full title of The Worshipful the Mayor of Torbay. As first citizen of the borough, the Civic Mayor will perform the civic and ceremonial duties for the borough. Any future change to these arrangements will be a matter for the Council to determine.

The Civic Mayor will be elected by the Council annually and normally the Administration hold the position of Civic Mayor. Cabinet Members are not permitted to be the Civic Mayor.

The Civic Mayor shall not be a member of any committee, sub-committee or working party or attend any meeting as a substitute.

The Civic Mayor will carry out the roles laid down in the Civic Mayor's Job

Description as set out in Part 6 of this Constitution.

4.07 The Deputy Civic Mayor of the Council

The Deputy Civic Mayor will be appointed by the Council annually and normally the Administration hold the position of the Deputy Civic Mayor. Cabinet members are not permitted to be the Deputy Civic Mayor. In the Civic Mayor's absence, the Deputy Civic Mayor will have the roles and functions set out in the Civic Mayor's Job Description as set out in Part 6 of this Constitution.

The Deputy Civic Mayor of the Council shall be permitted to be a member of any Council appointed committee, sub-committee or working party or attend any meetings as a substitute.

Article 5 – Overview and Scrutiny

(References: Section 21 and Schedule 1 (paragraphs 7, 8, 10 and 11), Local Government Act 2000)

This Article sets out the principle, structure, role and functions of Overview and Scrutiny. Detailed information about the operation of Overview and Scrutiny is set out in the Standing Orders in relation to Overview and Scrutiny.

5.01 Principle of Overview and Scrutiny

Torbay Council aims to have an overview and scrutiny function which adheres to the Centre for Public Scrutiny's four principles of good scrutiny, as set out below.

Good public scrutiny:

1. provides "critical friend" challenge to executive policy-makers and decision-makers;

2. enables the voice and concerns of the public;

3. is carried out by "independent minded governors" who lead and own the scrutiny role; and

4. drives improvement in public services.

5.02 Overview and Scrutiny Bodies

The Council will appoint a committee known as the Overview and Scrutiny Board to perform the overview and scrutiny function which is the central element to the Constitution.

The Overview and Scrutiny Board may appoint a sub-committee known as the Health Scrutiny Board to perform the Council's functions in relation to health scrutiny.

The Overview and Scrutiny Board may appoint other sub-committees to perform its functions. In addition the committee and/or their sub-committees may appoint working parties to perform their functions.

Overview and scrutiny sub-committees and/or working parties may be known by other appropriate names.

5.03 Membership of overview and scrutiny bodies

The membership of the overview and scrutiny committee and its sub-committees will be as set out in the Standing Orders in relation to Overview and Scrutiny in Part 4 of this Constitution.

5.04 Overview and Scrutiny Co-ordinator

The Council will appoint a Councillor who is a member of the Overview and Scrutiny Board to act as the Overview and Scrutiny Co-ordinator. The Overview and Scrutiny Co-ordinator will normally be a Member from the Opposition (where political balance allows) and be the person elected as Chair of the Overview and Scrutiny Board. The role of the Overview and Scrutiny Co-ordinator will have equivalent status to the role of a Member of the Cabinet and have special responsibility for leading the overview and scrutiny function. The Council may at any time remove the Member from the

post of Overview and Scrutiny Co-ordinator.

5.05 Overview and Scrutiny Lead Members

The Council may appoint councillors as Overview and Scrutiny Lead Members with designated special responsibilities. Subject to the overall composition of the Overview and Scrutiny Board complying with the requirements of political balance, each Scrutiny Lead Member will also be a member of the Overview and Scrutiny Board. The Council may at any time remove any member from the posts of Overview and Scrutiny Leads.

5.06 General role of the Overview and Scrutiny Bodies

Within its terms of reference (and in accordance with Standing Orders in relation to Overview and Scrutiny or the Local Protocol on Working Parties as appropriate), the overview and scrutiny committee, its sub-committees and any working parties of the committee or its sub-committees may:

(i) review and/or scrutinise decisions made or actions taken in respect of any functions which are the responsibility of the Council or the Cabinet;

(ii) make reports and/or recommendations to any relevant body in respect of any matter which affects Torbay or its inhabitants;

(iii) make reports and/or recommendations to any joint or area committee in connection with the discharge of any of their functions;

(iv) consider matters referred to it by the Leader of the Council (where applicable) or the Cabinet;

(v) review and/or scrutinise matters relating to the health service within Torbay and make reports and/or recommendations on such matters;

(vi) review and/or scrutinise matters relating to crime and disorder within Torbay and make reports and/or recommendations on such matters; and

(vii) exercise the right to call-in, for consideration, decisions made, but not yet implemented, by the Leader of the Council (where applicable), the Cabinet, a Committee of the Cabinet, individual members of the Cabinet and/or any joint or area committee (in respect of the executive functions only) or by officers (in respect of Key Decisions only).

The Overview and Scrutiny Board or, if relevant and appointed, the Health Scrutiny Board may consider any Councillor Calls for Action referred to it in accordance with the Standing Orders in relation to Overview and Scrutiny.

However, the overview and scrutiny committee, its sub-committees or any working parties of the committees or their sub-committees will not normally scrutinise individual decisions in relation to development management, licensing, registration, consents or other permissions. The overview and scrutiny function will not be an alternative to normal appeals procedures.

5.07 Specific functions of the overview and scrutiny committees

(a) Policy development and review

The overview and scrutiny bodies may:

(i) assist the Council and Cabinet in the development of the Council's Budget and Policy Framework by in-depth analysis of policy issues;

(ii) consider matters referred to them by the Leader of the Council (where applicable), the Cabinet, committees of the Cabinet and members of the Cabinet;

(iii) conduct research and consultation (with the community and others) in the analysis of policy issues and possible options;

(iv) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;

(v) question the Leader of the Council, members of the Cabinet, members of any committee and officers about their views on issues and proposals affecting the area; and

(vi) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.

(b) Scrutiny

The overview and scrutiny committees may:

(i) review and scrutinise the decisions made by, and the performance of, the Leader of the Council (where applicable), the Cabinet and any committees over time;

(ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and particular service areas;

(iii) question the Leader of the Council (where applicable), members of the Cabinet, members of any committee, members who have power delegated to them under section 236 of the Local Government and Public Involvement in Health Act 2007 and officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time or in relation to particular decisions, initiatives or projects;

(iv) make recommendations to the Leader of the Council (where applicable), the Cabinet, any committees or the Council arising from the outcome of the scrutiny process;

(v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the relevant overview and scrutiny committee and local people about their activities and performance; and

(vi) question and gather evidence from any person (with their consent).

(c) Finance

The Overview and Scrutiny Board may exercise overall responsibility for any finances made available to it and the other overview and scrutiny committees.

(d) Annual report

The Overview and Scrutiny Board must report annually (on behalf of all the overview and scrutiny committees) to the Council on the workings of overview and scrutiny at Torbay and make recommendations for the future work programme for the Overview and Scrutiny Board (including the other overview and scrutiny committees, their sub-committees and any working parties) and amended working methods if appropriate.

(e) Other Functions

The Overview and Scrutiny Board may consider any matters that are required by law or good practice to be considered by the Board.

5.08 Proceedings at overview and scrutiny committees

Meetings of the overview and scrutiny committees and its sub-committees will be held in accordance with the appropriate Standing Orders set out in Part 4 of this Constitution. Meetings of the working parties of the committees or their sub-committees will be held in accordance with the Local Protocol on Working Parties as set out in Part 5 of this Constitution.

Article 6 – The Leader of the Council and Cabinet

(References: Section 9C, 9E and Schedule A1 (paragraphs 1, 2 and 3), Local Government Act 2000
Sections 44 and 67, Local Government and Public Health Involvement Act 2007)

6.01 Membership and Composition of the Cabinet

The Cabinet will consist of a maximum of ten members including:

(i) the Leader of the Council; and

(ii) at least two but no more than nine councillors appointed to the Cabinet by the Leader of the Council.

Only councillors may be appointed to the Cabinet. There may be no co-optees, deputies nor substitution of Cabinet members. Neither the Civic Mayor nor Deputy Civic Mayor of the Council may be appointed to the Cabinet. Members of the Cabinet may not be members of the Audit Committee and the Overview and Scrutiny Board or its sub-committee(s).

6.02 Role of Cabinet

The Cabinet is at the heart of the day-to-day decision-making process and have a key role in proposing the budget and policy framework to the Council (having taken into account the views of the Overview and Scrutiny Board or any of its committees). The Cabinet leads the implementation of Council policy within the Council's budget and policy framework and carries out all the Local Authority's functions which are not the responsibility of any other part of the Authority, whether by law or under this Constitution.

The Cabinet will lead the Council's corporate priority setting with input from the Overview and Scrutiny Board and other appropriate persons. It will be the focus of forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

6.03 The Leader of the Council

(a) Roles and Functions

The Leader of the Council will carry out the roles laid down in the Leader of the Council's Job Description as set out in Part 6 of this Constitution.

(b) Term of office

The Leader of the Council will be a councillor elected by the Council at the first annual meeting following the date of whole council elections. If the Council fails to elect the Leader of the Council at the annual meeting following the date of the whole council elections, the Leader is to be elected at a subsequent meeting of the Council. The Leader of the Council's term of office starts on the day of his/her election as Leader, continues for a four year term and ends on the day of the next annual meeting of the Council following the next whole council elections, unless:

(i) he/she is removed from office by an ordinary resolution of the Council following the receipt of a Notice of Motion; or

(ii) he/she resigns from the office (by notice in writing to the Chief Executive); or

(iii) he/she ceases to be a councillor; or

(iv) they are a no longer qualified to be a member of the Council by virtue of Section 79 or Section 80 of the Local Government Act 1972 (see Article 2, paragraph 2.01(b)).

6.04 Other Cabinet members

(a) Term of Office

Members of the Cabinet will hold office until:

(i) their appointment is terminated by the Leader of the Council (in accordance with paragraph (c) below); or

(ii) the Leader of the Council is removed from office by an ordinary resolution of the Council; or

(iii) they resign from the Cabinet (by notice in writing to the Chief Executive and copied to the Leader of the Council); or

(iv) they cease to be a councillor; or

(v) they are a no longer qualified to be a member of the Council by virtue of Section 79 or Section 80 of the Local Government Act 1972 (see Article 2, paragraph 2.01(b)).

(b) Appointment by the Leader of the Council

The size and composition of the Cabinet will be solely a matter for the Leader of the Council to decide. He/she may choose to appoint councillors from any political group on the Council or those not in a political group. The Cabinet need not reflect the political balance of the Council as a whole. The Leader of the Council will give written notice to the Chief Executive of the appointments he/she makes to the Cabinet, the date on which they take effect, any portfolios of functions which have been allocated and which Cabinet member has been appointed as the lead member for Children's Services. The Leader of the Council will report these appointments to the Council as and when they are made.

(c) Removal from office

The Leader of the Council may remove members from the Cabinet as he/she sees fit. He/she will give written notice to the Chief Executive of any changes to the Cabinet, the date on which they take effect, and will report these changes to the Council as and when they are made.

(e) Inability for the whole Cabinet to act

If all the members of the Cabinet are unable to act for any reason, then the Council will appoint an interim Cabinet to discharge the relevant executive functions.

6.05 Deputy Leader

(a) Appointment

The Leader of the Council is required to appoint one of the members of the Cabinet to act as Deputy Leader. The Leader of the Council will give written notice of such appointment to the Chief Executive and will report this appointment to the Council as and when it is made.

(b) Term of office

The Deputy Leader will hold office until:

(i) the end of the Leader of the Council's term of office unless the Deputy Leader is no longer a member of the Authority or the Cabinet; or

(ii) he/she is removed by the Leader of the Council from the office of Deputy Leader (in accordance with paragraph (d) below); or

(iii) the Leader of the Council is removed from office by an ordinary resolution of the Council; or

(iv) he/she resigns as Deputy Leader (by notice in writing to the Chief Executive and copied to the Leader of the Council); or

(v) he/she ceases to be a councillor; or

(vi) he/she is a no longer qualified to be a member of the Council by virtue of Section 79 or Section 80 of the Local Government Act 1972 (see Article 2, paragraph 2.01(b)).

(c) Duties of the Deputy Leader

If for any reason the Leader of the Council is unable to act, or the office of Leader of the Council is vacant, the Deputy Leader will act in his/her place until a new leader is elected or again able to act. If the Leader of the Council and Deputy Leader are unable to act or both their offices are vacant then the remaining members of the Cabinet must act in the Leader of the Council's place, or arrange for a member of the Cabinet to do so.

(d) Removal from office

The Leader of the Council may remove the Deputy Leader from office as he/she sees fit. He/she will give written notice to the Chief Executive of any changes to the office of Deputy Leader, the date on which it takes effect, and will report these changes to the Council as and when they are made.

6.06 Responsibility for functions

The Leader of the Council will maintain the list in Part 3 of this Constitution setting out whether the Cabinet itself or which individual members of the Cabinet, committees of the Cabinet (if any),area committees (if any) of the Authority, officers or joint arrangements (if any) are responsible for the exercise of particular executive functions.

6.07 Committees of the Cabinet and Working Parties

The Cabinet may appoint committees of three or more members of the Cabinet and may, where they have the power to do so, delegate powers to those committees. The Cabinet may appoint working parties comprising members of the Cabinet, other councillors, officers and other persons with relevant knowledge and experience to advise the Cabinet.

6.08 Shadow Cabinet

Normally, the Leader of the largest Political Group that does not form part of the Executive may choose to form a Shadow Cabinet by their nomination from amongst the Members of the Opposition. The Head of Governance Support shall be notified of the names of the Members nominated to form a Shadow Cabinet and of any changes in the membership of the Shadow Cabinet which may occur from time to time. The Shadow Cabinet will operate in accordance with the Local Protocol for Shadow Cabinet as set out in Part 5 of this Constitution.

Article 7 – Regulatory and Other Committees

7.01 Regulatory and other committees

The Council will appoint the committees set out in Schedule 4 of Part 3 of this Constitution. The terms of reference of those committees will be as described in that Schedule.

7.02 Meetings of regulatory and other committees

Meetings of the regulatory and other committees in this Article will be held in accordance with the Standing Orders in relation to Access to Information and with the programme decided by the Council at its annual meeting for the 4-year term in the year of a whole Council Election. Extraordinary meetings of these committees may be called in accordance with the Standing Orders in relation to Council Meetings.

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Article 8 – Community Involvement

(References: Part VA, Local Government Act 1972
Section 13, Local Government and Housing Act 1989
Regulations 4, 5 and 16A, Local Government (Committees and Political Groups) Regulations 1990
Section 18, Local Government Act 2000
The Local Authorities (Functions and Responsibilities) (England) Regulations 2000)

8.01 Area Committees

The Council may appoint area committees as it sees fit, if it is satisfied that to do so will ensure:

(i) improved service delivery in the context of delivering the Council's corporate priorities; and

(ii) more efficient, transparent and accountable decision-making.

The Council will consult with Brixham Town Council when considering whether and how to establish area committees within Brixham.

8.02 Community Partnerships

The Council recognises the roles of the Community Partnerships in Torbay to increase the involvement of local people in their communities. The membership of each Community Partnership is recommended to be open to all people living or working, or organisations operating, within the boundary of the Community Partnership or anyone else invited by the Community Partnership to become a member of that body.

8.03 Area Committees – Access to information

Area committees will comply with the Standing Orders in relation to Access to Information in Part 4 of this Constitution.

8.04 Cabinet members on Area Committees

A member of the Cabinet may be appointed by the Council to serve on an area committee.

The Leader of the Council may be appointed by the Council as a member of one or more area committees.

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Article 9 – Joint Arrangements

(References: Sections 9EA, Local Government Act 2000 S101, Local Government Act 1972, The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000)

9.01 Arrangements to promote well-being

The Council or the Cabinet, in order to promote the economic, social or environmental well-being of its area, may:

(i) enter into arrangements or agreements with any person or body;

(ii) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and

(iii) exercise on behalf of that person or body any functions of that person or body.

9.02 Joint arrangements

The Council may establish joint arrangements with one or more local authorities to (a) exercise functions which are not executive functions in any of the participating authorities or (b) advise the Council. Such arrangements may involve the appointment of a joint committee with those other local authorities.

The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are executive functions. Such arrangements may involve the appointment of joint committees with those local authorities.

Except as set out in paragraph 12 of the Local Authorities (Arrangements for the Discharge of functions) (England) Regulations 2012, the Cabinet may only appoint Cabinet members to a joint committee and those members need not reflect the political balance of the Local Authority as a whole.

Details of any joint arrangements including any delegations to joint committees will be set out in Part 3 of this Constitution.

9.03 Access to information

The Standing Orders in relation to Access to Information set out in Part 4 of this Constitution apply to joint committees.

If all the members of a joint committee are members of the Cabinet in each of the participating authorities then its access to information regime is the same as that applied to the Cabinet.

If the joint committee contains members who are not on the Executive of any participating authority then the access to information rules in Part VA of the Local Government Act 1972 will apply.

9.04 Delegation to and from other local authorities

The Council may delegate non-executive functions to another local authority where the relevant function is also a function of the other authority.

The Cabinet may delegate executive functions to another local authority where the relevant function is also a function of the other authority.

The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council, where all or any of such functions are the responsibility of the Council and reserved to the Leader of the Council where they are the responsibility of the Cabinet.

9.05 Contracting out

The Council (for functions which are not executive functions) or the Cabinet (for executive functions) may contract out, to another body or organisation, functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994, or under contracting arrangements where the contractor acts as the Council's agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision-making.

Article 10 – Officers

(References: Sections 112 and 151, Local Government Act 1972
Sections 4, 5 and 5A, Local Government and Housing Act 1989
Paragraph 5, Schedule A1, Local Government Act 2000)

10.01 Management Structure

(a) General

The Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions. Officers have a responsibility to the Council as a whole rather than to any one part of the Authority.

Officers will comply with the Code of Conduct for Employees and the Protocol on Member/Officer Relations set out in Part 5 of this Constitution.

The recruitment, selection and dismissal of officers will comply with Human Resources Policy and relevant Standing Orders set out in Part 4 of this Constitution.

(b) Chief Officers

The Council has posts of Chief Executive and Directors. These persons are designated chief officers.

All chief officers will participate fully in the corporate leadership and management of the Council as a whole and in the determination of the Council's strategic vision. In addition they will oversee and manage such Business Units as determined from time to time by the Chief Executive.

One of the chief officers will be designated by the Chief Executive as Deputy Chief Executive to act in his/her absence.

The Chief Executive is appointed as the Head of the Paid Service and will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers.

(c) Head of the Paid Service, Monitoring Officer and Chief Financial Officer

The Council will appoint the Head of Paid Service, Monitoring Officer and Section 151 Officer (Chief Finance Officer).

The Chief Executive shall always be the Head of the Paid Service and cannot be the Monitoring Officer. The Monitoring Officer and Chief Finance Officer may not necessarily be chief officers but, regardless of their status, it is necessary that they have access, as required; to meetings and that members consult them regularly.

The duties of the Monitoring Officer and Chief Finance Officer (apart from the administration of the financial affairs of the Council) must be carried out personally, but can be carried out by a deputy nominated by them in cases of absence or illness. It is the function of the Monitoring Officer and Chief Finance Officer, not the Council nor any other officer, to appoint their deputies.

These posts will have the functions described in Article 10.02-10.04 below.

(d) **Group Assistants**

The Council may engage one Group Assistant for each qualifying political group (up to a maximum of three qualifying political groups) where the budget is allocated for such appointments. Any Group Assistants appointed to the qualifying political groups will be appointed in accordance with the provisions of Section 9 of the Local Government and Housing Act 1989.

The role of the Group Assistants is to provide assistance to the members of their respective political groups rather than to the Authority as a whole, and they will comply with the Local Protocol on Group Assistants set out in Part 5 of this Constitution.

10.02 Functions of the Head of the Paid Service

(a) **Discharge of functions by the Council**

The Head of the Paid Service will report to Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.

(b) **Restrictions on functions**

The Head of the Paid Service may not be the Monitoring Officer, but may hold the post of Chief Finance Officer if he/she is a qualified accountant.

10.03 Functions of the Monitoring Officer

(a) **Maintaining the Constitution**

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available to members, officers and the public.

(b) **Ensuring lawfulness and fairness of decision-making**

After consulting with the Head of the Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council (or to the Cabinet in relation to an executive function) if he/she considers that any proposal, decision or omission would give rise to unlawfulness, or if any decision (or omission) has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

(c) **Supporting the Standards Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and its sub-committees.

(d) **Advising whether executive decisions are within the budget and policy framework**

The Monitoring Officer will advise whether decisions of the Executive are in accordance with the budget and policy framework in consultation with the Chief Finance Officer.

(e) **Providing advice**

The Monitoring Officer will, with the Head of Paid service and the Chief Finance Officer, provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors.

(f) **Restrictions on posts**

The Monitoring Officer cannot be the Chief Finance Officer or the Head of the Paid Service.

10.04 Functions of the Chief Finance Officer

(a) **Ensuring lawfulness and financial prudence of decision-making**

After consulting with the Head of the Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council (or the Cabinet in relation to an executive function) and the Council's external auditor if he/she considers that any proposal, decision or course of action:

(i) will involve incurring unlawful expenditure; or

(ii) is unlawful and is likely to cause a loss or deficiency; or

(iii) if the Council is about to enter an item of account unlawfully.

(b) **Administration of financial affairs**

The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.

(c) **Contributing to corporate management**

The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

(d) **Providing advice**

The Chief Finance Officer, with the Head of Paid service and the Monitoring Officer, will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.

(e) **Giving financial information**

The Chief Finance Officer will provide financial information to the media, members of the public and the community.

10.05 Duty to provide sufficient resources to the Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer

The Council will provide the Head of the Paid Service, the Monitoring Officer and the Chief Finance Officer with such officers, accommodation and other resources as are, in the officers' opinion, sufficient to allow their duties to be performed.

Article 11 – Decision-Making

11.01 Responsibility for decision-making

The Council will issue and keep up to date a record of which part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

11.02 Principles of decision-making

All decisions by the Leader of the Council (where applicable), individual members, officers and of decision-making bodies and recommendations of all Council bodies (including working parties) will be made in accordance with the following principles:

(i) Decision makers will consider any suggested and reasonable alternatives and, wherever reasonably possible, provide the public the opportunity to make representations.

(ii) Decision makers must understand the legal requirements regarding the decision-making power and observe them.

(iii) Decision makers will take into account all relevant matters, both general and particular, and ignore irrelevant matters.

(iv) Decision makers will act for a proper purpose and for the public good.

(v) Decision makers will observe the rules relating to local government finance.

(vi) Decision makers will act with procedural propriety and in accordance with the rules of fairness and natural justice.

(vii) Decision makers will ensure they are properly authorised to take decisions.

(viii) Decision makers will act in accordance with the European Convention on Human Rights.

(ix) Decision makers will be responsible for their decision and be prepared to account for them to councillors and the public.

(x) Decision makers will have regard to the Code of Conduct and relevant protocols as set out in this Constitution.

(xi) Decision makers will have regard to officer professional advice.

Subject to 11.08 below, all meetings will be held in accordance with the appropriate Standing Orders as set out in Part 4 of this Constitution.

11.03 Types of decision

(a) Decisions reserved to the Council

Decisions relating to the functions listed in Article 4.02 will be made by the Council and not delegated.

(b) **Key decisions and the content of the Forward Plan**

(i) The Regulations define a key decision as a decision in relation to an Executive function which is likely to:

(1) result in incurring expenditure or making of savings which are significant; or

(2) be significant in terms of its effects in communities living or working in the area.

A proposed decision shall be regarded as a Key Decision by way of "incurring expenditure or making of savings which are significant" if any one or more of the following apply:

(1) In the opinion of the Section 151 Officer (Chief Finance Officer), there is likely to be a budget variation (other than one within a Business Unit) of more than £250,000;

(2) In the opinion of the Chief Finance Officer, it is likely to result in capital expenditure above that provided for in the capital programme and it is likely to involve an additional call on the Council's internal resources of more than £250,000;

(3) In the opinion of the relevant Director, the decision is likely to have a material effect on Council services, including where:-

- an existing service will be reduced by more than 10 per cent or will cease all together;
- a service which is currently provided in house will be outsourced (or vice versa); or
- a partnership will be entered with a third party which is likely to involve a material element of risk transfer to the Council;

(4) The proposal involves the acquisition or disposal of land having a value estimated by the Chief Finance Officer to be likely to exceed £250,000;

(5) The proposal involves the disposal of a capital asset (other than land) having a value estimated by the Chief Finance Officer to be likely to exceed £250,000;

(6) Where in the opinion of the Head of Human Resources the proposal is likely to result in compulsory redundancies or major changes to the terms and conditions of employment of 25 or more employees across the Council's functions;

(ii) Decisions taken by the Chief Finance Officer under delegated authority in connection with Treasury Management shall not be regarded as key decisions irrespective of the value of the transactions involved.

(iii) A proposed decision shall be regarded as a Key Decision by way of being "significant in terms of its effects in communities living or working in the area" if the relevant Director or Divisional Director, in consultation with the relevant

Cabinet member, considers that it ought to be included in the Forward Plan having regard to all the circumstances including the following principles:

(1) A decision may affect a great number of people, or a number of wards, but not significantly and these decisions shall **not** normally be regarded as key;

(2) A decision that has a significant impact on communities living or working in only one ward will normally be treated as a key decision e.g. a school closure or the introduction or amendment of traffic calming measures;

(3) Where a decision is only likely to have a significant impact on a very small number of people in one ward it will **not** normally be key. But the people affected shall be informed of the forthcoming decision in sufficient time for them to exercise their rights to see the relevant papers and make an input into the decision-making process;

(4) Consideration shall be given to the level of public interest in the decision. The higher the level of interest the more appropriate it is that the decision shall be considered to be key.

(iv) The Forward Plan is published upon receipt of any changes or new entry and contains brief details of key decisions that are anticipated to be made.

(v) The Council will also include in the Forward Plan the following:-

(1) Any decision that forms part of the development of or a change to the Policy Framework;

(2) Any decision that is, in the opinion of the Chief Finance Officer, not in accordance with the Council's Budgetary Framework. This shall include any decision which has financial implications not provided for within the revenue budget, capital programme or under the virement rules;

(3) A brief description of any relevant risks associated with all proposed decisions.

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Article 12 – Finance, Contracts and Legal Matters

(references: Sections 135,151, 223 & 234, Local Government Act 1972
Part VIII, Local Government Finance Act 1988)

12.01 Financial management

The management of the Council's financial affairs will be conducted in accordance with the Standing Orders in relation to the Budget and Policy Framework and the Financial Regulations set out in Part 4 of this Constitution.

12.02 Legal proceedings

The Head of Legal Services is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where he/she considers that such action is necessary to protect the Council's interests.

12.03 The Common Seal and execution of documents

(a) The Common Seal of the Council will be kept in a safe place in the custody of the Head of Legal Services or another officer authorised in writing by him/her.

(b) A decision of the Council, or any part of it (including a decision by the Chief Executive, Directors, Divisional Directors or Head of Service), will be sufficient authority for sealing any document necessary to give effect to the decision.

(c) The Common Seal will be affixed to those documents which in the opinion of the Head of Legal Services shall be sealed. The affixing of the Common Seal will be attested by the Head of Legal Services or any other responsible officer duly authorised by the Head of Legal Services in writing.

(d) The Head of Legal Services is authorised to sign all legal or official documents which in her/ his opinion shall be signed. That authority shall also apply to any other responsible officer duly authorised by the Head of Legal Services in writing.

12.04 Authentication of Documents

Where any document is necessary to be authenticated it will be certified as such by the Head of Legal Services or other person authorised by him/her, unless any enactment otherwise authorises or requires or the Council has given requisite authority to some other person.

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Article 13 – Review and Revision of The Constitution

(references: Sections 9MF and 9K, Local Government Act 2000)

13.01 Duty to monitor and review the Constitution

The Council has responsibility for monitoring and reviewing the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

In order to give advice to Council, the Monitoring Officer will also monitor and review the operation of the Constitution.

It is important for the Monitoring Officer to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order to better achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

(i) observe meetings of different parts of the member and officer structure;

(ii) undertake an audit trail of a sample of decisions;

(iii) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and

(iv) compare practices within Torbay Council with those in comparable authorities or national examples of best practice.

13.02 Changes to the Constitution

(a) Role of Monitoring Officer

The Monitoring Officer will keep the Constitution under review and is authorised to make changes which are required for technical or legal reasons. The Monitoring Officer is also authorised to make other changes to the Constitution that he/she believes are in the best interests of the Council and/or local people provided they are made in consultation with the Leader of the Council and Group Leaders; if any of them object, the Monitoring Officer will report the matter to Council for decision.

(b) Changes to the Constitution not affecting Executive arrangements

Changes to the Constitution which, in the opinion of the Monitoring Officer, do not in any way affect the operation of Executive arrangements (including overview and scrutiny) may be approved by the Monitoring Officer and brought into effect immediately (or at such other time as the Monitoring Officer shall determine) subject to (a) above.

(c) Changes to Executive arrangements

(i) The Council may draw up proposals for the operation of Executive arrangements (“different Executive arrangements”) which differ from the existing Executive arrangements in any respect.

(ii) Where the proposed “different Executive arrangements” involve a different form of Executive (i.e. leader and cabinet) the Council must take reasonable steps to consult the Borough’s electors and other interested persons in the area and must hold a referendum (the outcome of which supports the proposed change) before implementing the “different Executive arrangements”. A referendum can not usually be held more than once in any 10 year period.

Article 14 – Suspension, Interpretation and Publication of the Constitution

14.01 Suspension of the Constitution

(a) **Limit to suspension**

The Articles of this Constitution may not be suspended. The Standing Orders specified below may be suspended by the Council to the extent permitted within those Standing Orders and the law.

(b) **Procedure to suspend**

A motion to suspend any Standing Order will not be moved without notice unless at least half of the whole number of councillors are present.

(c) **Standing Orders capable of suspension**

The specific Standing Orders which may be suspended in accordance with Article 14.01 are set out in the Standing Orders in relation to Council meetings.

14.02 Interpretation

The ruling of the Civic Mayor as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

Interpretation of the application of this Constitution outside of any meeting of the Council is reserved to the Monitoring Officer and his/her determination is final.

14.03 Publication

The Head of Governance Support will ensure the Constitution is available to all Members electronically.

The Head of Governance Support will ensure that copies are available for inspection at Torquay Town Hall by electronic means and hard copies can be purchased by members, members of the local press and the public on payment of a reasonable fee. The Constitution is available on the Council's website (www.torbay.gov.uk).

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Article 15 – Health and Wellbeing Board

(References: Health and Social Care Act 2012 and
The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013)

15.01 Establishment of the Health and Wellbeing Board

The Council will establish a Health and Wellbeing Board for its area. The Board will be a committee of the local authority.

15.02 Purpose of the Torbay Health and Wellbeing Board

To agree the long-term strategy for improving the health and wellbeing of the people of Torbay.

To oversee the implementation of the Joint Health and Wellbeing Strategy.

To promote integration throughout the health and wellbeing system to ensure delivery against the Board's priorities.

15.03 Membership of the Health and Wellbeing Board

(As set out in the Health and Social Care Act 2012)

(a) The Health and Wellbeing Board must include:

At least one member of Torbay Council (nominated by the Leader of the Council)
Director of Adults and Community Services
Director of Children's Services
Director of Public Health
A representative of Healthwatch Torbay
A representative of South Devon and Torbay Clinical Commissioning Group

(b) The Leader of the Council may be a member of the Board.

(c) The National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the Joint Strategic Needs Assessment and the Health and Wellbeing Strategy.

(d) In considering a matter that relates to the exercise (or proposed exercise) of the commissioning functions of the NHS Commissioning Board within Torbay and if the Health and Wellbeing Board so requests, the NHS Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its consideration of the matter.

(e) The person appointed under sections (c) and (d) above may, with the agreement of the Health and Wellbeing Board, be a person who is not a member or employee of the NHS Commissioning Board.

(f) After consultation with the Health and Wellbeing Board, Torbay Council may appoint such additional persons to be members of the Board as it thinks appropriate.

(g) The Health and Wellbeing Board may appoint such additional persons to be members of the Board as it thinks appropriate.

15.04 Functions of the Health and Wellbeing Board

(a) For the purpose of advancing the health and wellbeing of the people (especially vulnerable children and adults) in its area, to encourage those who arrange for the provision of any health or social care services in the area to work in an integrated manner.

(b) In particular, to provide such advice, assistance and support as it thinks appropriate for the purpose of encouraging the making of arrangements under Section 75 (Arrangements between NHS bodies and local authorities) of the National Health Service Act 2006 in connection with the provision of such services.

(c) To encourage those who arrange for the provision of health-related services in its area to work closely with the Health and Wellbeing Board.

(d) To encourage those who arrange for the provision of any health or social care services in its area and those who arrange for the provision of any health-related services in its area to work closely together.

(e) To exercise the functions of Torbay Council and South Devon and Torbay Clinical Commissioning Group under sections 116 (Health and social care: joint strategic needs assessments) and 116A (Health and social care: joint health and wellbeing strategy) of the Local Government and Public Involvement in Health Act 2007, namely:

- Preparation of a Joint Strategic Needs Assessment; and
- Preparation of a Joint Health and Wellbeing Strategy

(f) In accordance with regulations, to assess needs for pharmaceutical services in Torbay and publish a statement of its first assessment and of any revised assessment.

(g) To give the Council its opinion on whether the local authority is discharging its duty under section 116B (Duty to have regard to assessments and strategies) of the Local Government and Public Involvement in Health Act 2007.

(h) In accordance with Section 10 of the Children Act 2004, to exercise the statutory duty to promote co-operation between Torbay Council, its relevant partners and other partners or bodies as the Council considers appropriate, to improve the well-being of children in the area

(i) In accordance with the “Working Together” Guidance, to consider the annual report of the Torbay Safeguarding Children’s Board.

15.05 Proceedings at the Health and Wellbeing Board

Meetings of the Health and Wellbeing Board will be held in accordance with the appropriate Standing Orders set out in Part 4 of Torbay Council’s Constitution.

Schedule 1 – Description of Executive Arrangements

The following parts of this Constitution constitute the Torbay Council's executive arrangements:

1. Article 2 in relation to political proportionality not applying the Cabinet.

2. Article 5 (Overview and Scrutiny) and the Standing Orders in relation to Overview and Scrutiny.

3. Article 6 (The Leader of the Council and Cabinet) and the Standing Orders in relation to the Cabinet.

4. Article 8 (Community Involvement) – so far as area committees may have executive functions delegated to them.

5. Article 9 (Joint Arrangements) – so far as joint committees may have executive functions delegated to them.

6. Article 11 (Decision-making) and the Standing Orders in relation to Access to Information.

7. Part 3 (Responsibility for Functions).

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Responsibility for Functions

(References: The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and Section 13, Local Government Act 2000)

1. Section 13 of the Local Government Act 2000 ("the 2000 Act") provides for the discharge of the Council's functions by an "Executive" of the authority unless those functions are specified in the Act (or in Regulations) as functions that are not to be the responsibility of the Executive. Torbay Council has adopted the Leader and Cabinet style of Executive and the phrase 'Cabinet' in this Constitution means the Leader of the Council and their Cabinet

2. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) ("the Functions Regulations") give effect to section 13 of the 2000 Act. The Functions Regulations specify which functions are **not** to be the responsibility of the Cabinet, which functions may (but need not) be the responsibility of the Cabinet ("the Local Choice Functions") and which functions are only the responsibility of the Cabinet to a limited extent. **All other functions not so specified are the responsibility of the Cabinet and are known as "Executive functions".**

3. Those functions that are **not** the responsibility of the Cabinet are referred to as "non-executive functions" or "Council functions".

4. Executive functions may be exercised by the Leader of the Council personally (where applicable), or may be delegated in accordance with the Standing Orders in relation to the Cabinet and exercised by the Cabinet collectively, a committee of the Cabinet, individual members of the Cabinet, area committee, joint committees and officers.

5. The Council has delegated many Council functions to committees, sub-committees and officers.

6. Schedule 1 below sets out the Local Choice Functions and whether they are the responsibility of the Council or the Cabinet.

7. Schedule 2 sets out those functions that the Functions Regulations specify must not be Executive Functions: i.e. that must be performed by the Council or (unless prohibited) delegated to a committee, sub-committee or officer.

8. Schedule 3 sets out the circumstances when functions are not the responsibility of the Cabinet. However, special rules (contained in the Standing Orders in relation to the Budget and Policy Framework) apply in cases of urgency.

9. Schedule 4 sets out the terms of reference of the committees and sub-committees with delegated responsibility for exercising Council functions.

10. Schedule 5 sets out the Scheme of Delegation of Executive functions.

11. Schedule 6 sets out the Officer Scheme of Delegation. Where functions are delegated to specific officers those officers may (unless prohibited by law) further delegate (in writing) to other officers the responsibility for performing those functions.

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Schedule 1 – Responsibility for 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),(1A) and 94 (4) of the School Standards and Framework Act 1998 (admission appeals)	Council function.
3.	The making of arrangements in relation to appeals against the exclusion of pupils from maintained schools	Council function.
4.	The making of arrangements pursuant to section 95(2) of 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.	Any function relating to contaminated land under Part IIA of the Environmental Protection Act 1990 and subordinate legislation under that Part.	Executive function.
6.	The discharge of any function relating to the control of pollution or the management of air quality under Pollution Prevention and Control Act 1999, Part IV of the Environment Act 1995, Part 1 of the Environmental Protection Act 1990 and the Clean Air Act 1993.	Executive function.
7.	The service of an abatement notice in respect of a statutory nuisance under Section 80(1) of the Environmental Protection Act 1990.	Executive function.
8.	The passing of a resolution that Schedule 2 of the Noise and Statutory Nuisance Act 1993 shall apply in the authority's area under Section 8 of the Noise and Statutory Nuisance Act 1993.	Executive function.
9.	The inspection of the authority's area to detect any statutory nuisance under Section 79 of the Environmental Protection Act 1990.	Executive function.

Function	Executive or Council Function?
10. The investigation of any complaint as to the existence of a statutory nuisance under Section 79 of the Environmental Protection Act 1990.	Executive function.
11. The obtaining of information under section 330 of the Town and Country Planning Act 1990 as to interests in land.	Executive function.
12. The obtaining of particulars of persons interested in land under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Executive function.
13. The appointment (or revocation of any such appointment) of any individual to: (a) any office other than an office in which he is employed by the authority; (b) any body other than the authority or a joint committee of two or more authorities; or (c) any committee or sub-committee of such a body.	Council function (Note: the Council's Protocol on relations between the Leader of the Council and Political Groups provides that, where the Outside Body requests a specific role, Council should accede to the request other than in exceptional circumstances.)
14. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.	Executive function.
15. Any function of a local authority in their capacity as a harbour authority (to the extent that the function does not fall within paragraph 17 below)	Council function.
16. The making of agreements for the execution of highway works under Section 278 of the Highways Act 1980, substituted by the New Road and Street Works Act 1991 Section 23.	Executive function.
17. 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.

Function	Executive or Council Function?
18. Functions relating to local area agreements under sections 106, 110, 111, 113 of the Local Government and Public Involvement in Health Act 2007.	Executive function. *(Note: whilst Local Area Agreements have been disbanded by the Government, this legislation is still live)*

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Schedule 2 – Responsibility for Council Functions

Function		Provision of Act or Statutory Instrument
A.	**Functions relating to town and country planning and development management**	
1.	Powers and duties relating to local development documents which are development plan documents.	Sections 20 to 23 and 25, 26 and 28 of the Planning and Compulsory Purchase Act 2004. *Removed by the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929*
2.	Power to agree to establish a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, a local planning authority.	Section 29 of the Planning and Compulsory Purchase Act 2004 *Removed by the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929*
3.	Power to agree to confer additional functions on a joint committee.	Section 30 of the Planning and Compulsory Purchase Act 2004 *Removed by the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929*.
4.	Power to request the dissolution of a joint committee.	Section 31 of the Planning and Compulsory Purchase Act 2004 *Removed by the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2005/929*
5.	Power to determine application for planning permission or permission in principle.	Sections 59A(1)(b), 70(1)(a) and (b) and 72 of the Town and Country Planning Act 1990
6.	Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990
7.	Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990
8.	Power to decline to determine application for planning permission.	Section 70A of the Town and Country Planning Act 1990

Function	Provision of Act or Statutory Instrument
9. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) and directions made thereunder.
10. Power to determine application for planning permission (or permission in principle) made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (SI 1992/1492)
11. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418)
12. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990
13. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990
14. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990
15. Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992 (SI 1992/666)
16. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990
17. Power to require discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990
18. Power to serve a planning contravention notice, breach of condition notice or stop notice including a temporary stop notice.	Sections 171C, 171E, 187A and 183(1) of the Town and Country Planning Act 1990
18A. Power to issue a temporary stop notice.	Section 171E of the Town and Country Planning Act 1990

Function	Provision of Act or Statutory Instrument
19. Power to issue an enforcement notice.	Section 172 of the Town and Country Planning Act 1990
20. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990
21. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990
22. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 and paragraph 6(5) of Schedule 14 to that Act
23. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990
24. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17, 27(2) and 33(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
25. Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990, as applied by section 74(3) of that Act *Removed by Enterprise and Regulatory Reform Act 2013 (Abolition of Conservation Area Consent) (Consequential and Saving Provision) (England) Order 2013/2146*
26. Duties relating to applications for listed building consent and conservation area consent.	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of the Department of the Environment Circular 01/01
27. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990

Function	Provision of Act or Statutory Instrument
28. Power to issue enforcement notice in relation to demolition of listed building in conservation area.	Sections 38 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.
29. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Buildings in Conservative Areas) Act 1990
30. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Buildings in Conservation Areas Act 1990
30A. Power to authorise stopping up or diversion of highway.	Section 247 of the Town and Country Planning Act 1990
31. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990
B. Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)	
1. Power to issue licences authorising the use of land as a caravan site (“site licences”).	Section 3(3) of the Caravan Sites and Control of Development Act 1960.
2. Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936.
4. Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5. Power to license operators of hackney carriages and private hire vehicles.	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
6. Power to register pool promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963 (as saved for certain purposes by Article3(3)(c))of the Gambling Act Order)
7. Power to grant track betting licences.	Schedule 3 to the Betting, Gaming and Lotteries Act 1963 (as saved for certain purposes by article 3(3)(d) and (4)of the Gambling Act

Function	Provision of Act or Statutory Instrument
	Order)
8. Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963.(as saved for certain purposes by article 3(3)(e) of the Gambling Act Order)
9. Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968. (as saved for certain purposes by article 4(2)(1) and (m) of the Gambling Act Order
10. Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976.(as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order)
11. Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 (as saved for certain purposes by article 5(2)(d) and (5)of the Gambling Act Order)
12. Power to issue cinema and cinema club licences (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).	Section 1 of the Cinema Act 1985. (this provision ceased to have effect from 24th November 2005 by virtue of the Licensing Act 2003).
13. Power to issue theatre licences (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).	Sections 12 to 14 of the Theatres Act 1968. (this provision ceased to have effect from 24th November 2005 by virtue of the Licensing Act 2003).
14. Power to issue entertainments licences (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).	Section 12 of the Children and Young Persons Act 1933, section 79 of the Licensing Act 1964, sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982 (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).
14A .Any function of a licensing authority	Licensing Act 2003 and any regulations or orders made under that Act

Function	Provision of Act or Statutory Instrument
14AA. Duty to comply with requirement to provide information to Gambling Commission	Section 29 of the 2005 Act
14AB Functions relating to exchange of information.	Section 30 of the 2005 Act
14AC Functions relating to occasional use notices	Section 39 of the 2005 Act.]
14B Power to resolve not to issue a casino premises licence.	Section 166 of the 2005 Act.
14C Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises.	Section 304 of the 2005 Act.
14CA. Power to make order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises	Section 284 of the 2005 Act
14D Power to institute criminal proceedings for offences under section 342 of the 2005 Act.	Section 346 of the 2005 Act.
14E Power to exchange information.	Section 350 of the 2005 Act.
14F Functions relating to the determination of fees for premises licences.	The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (S.I. 2007/479).
14G Functions relating to the registration and regulation of small society lotteries.	Part 5 of Schedule 11 to the 2005 Act.
15. Power to license sex shops and sex cinemas.	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
16. Power to license performances of hypnotism.	The Hypnotism Act 1952.
17. Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
18. Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907.
19. Power to register door staff	The Local Government (Miscellaneous Provisions) Act 1982 *This power ceases to exist.*

Function	Provision of Act or Statutory Instrument
20. Power to license market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982.Part III of the London Local Authorities Act 1990 and section 6 of the London Local Authorities Act 1994
21. Power to license night cafes and take-away food shops (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).	Section 2 of the Late Night Refreshment Houses Act 1969 (this provision will cease to have effect from 24th November 2005 by virtue of the Licensing Act 2003).
22. Duty to keep list of persons entitled to sell non-medicinal poisons.	Sections 3(1)(b)(ii), 5, 6 and 11 of the Poisons Act 1972. *This power ceases to exist.*
23. Power to license dealers in game and the killing and selling of game.	Sections 5, 6, 17, 18 and 21 to 23 of the Game Act 1831; sections 2 to 16 of the Game Licensing Act 1860, section 4 of the Customs and Inland Revenue Act 1883, sections 12(3) and 27 of the Local Government Act 1874, and section 213 of the Local Government Act 1972.
24. Power of register and license premises for the preparation of food.	Section 19 of the Food Safety Act 1990.
25. Power to license scrap yards.	Section 1 of the Scrap Metal Dealers Act 1964.
27. Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Part III of the Fire Safety and Safety of Places of Sport Act 1987.
28. Power to issue fire certificates.	Section 5 of the Fire Precautions Act 1971.
29. Power to license premises for the breeding of dogs.	Section 1 of the Breeding of Dogs Act 1973 and section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999.
30. Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	Section 1 of the Pet Animals Act 1951; section 1 of the Animal Boarding Establishments Act 1963; the Riding Establishments Acts 1964 and 1970; section 1 of the Breeding of Dogs Act 1973, and

Function	Provision of Act or Statutory Instrument
	sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999.
31. Power to register animal trainers and exhibitors.	Section 1 of the Performing Animals (Regulation) Act 1925.
32. Power to license zoos.	Section 1 of the Zoo Licensing Act 1981.
33. Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976.
34. Power to license knackers' yards.	Section 4 of the Slaughterhouses Act 1974. See also the Animal By-Products Order 1999 (S.I. 1999/646).
35. Power to license the employment of children.	Part II of the Children and Young Persons Act 1933, byelaws made under that Part, and Part II of the Children and Young Persons Act 1963.
37. Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to: (a) an exchange of lands effected by an order under section 19(3) of, or paragraph 6(4) of Schedule 3 to, the Acquisition of Land Act 1981 or (b) an order under section 147 of the Inclosure Act 1845	Regulation 6 of the Commons Registration (New Land) Regulations 1969 (S.I. 1969/1843).
38. Power to register variation of rights of common.	Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/1471).
39. Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc. (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939.
40. Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993.

Function	Provision of Act or Statutory Instrument
41. Power to grant a street works licence.	Section 50 of the New Roads and Street Works Act 1991.
42. Power to license agencies for the supply of nurses.	Section 2 of the Nurses Agencies Act 1957.
43. Power to issue licences for the movement of pigs.	Article 12 of the Pigs (Records, Identification and Movement) Order 1995 (S.I. 1995/11).
44. Power to license the sale of pigs.	Article 13 of the Pigs (Records, Identification and Movement) Order 1995.
45. Power to license collecting centres for the movement of pigs.	Article 14 of the Pigs (Records, Identification and Movement) Order 1995.
46. Power to issue a licence to move cattle from a market.	Article 5(2) of the Cattle Identification Regulations 1998 (S.I. 1998/871).
46A Power to grant permission for provision, etc. of services, amenities, recreation and refreshment facilities on highway, and related services.	Sections 115E, 115F and 115K of the Highways Act 1980
47. Power to permit deposit of builder's skip on highway.	Section 139 of the Highways Act 1980.
47A Duty to publish notice in respect of proposal to grant permission under section 115E of the Highways Act 1980	Section 115G of the Highways Act 1980
48. Power to license planting, retention and maintenance of trees etc. in part of highway.	Section 142 of the Highways Act 1980.
49. Power to authorise erection of stiles etc. on footpaths or bridleways.	Section 147 of the Highways Act 1980.
50. Power to license works in relation to buildings etc. which obstruct the highway.	Section 169 of the Highways Act 1980.

Function	Provision of Act or Statutory Instrument
51. Power to consent to temporary deposits or excavations in streets.	Section 171 of the Highways Act 1980.
52. Power to dispense with obligation to erect hoarding or fence.	Section 172 of the Highways Act 1980.
53. Power to restrict the placing of rails, beams etc. over highways.	Section 178 of the Highways Act 1980.
54. Power to consent to construction of cellars etc. under street.	Section 179 of the Highways Act 1980.
55. Power to consent to the making of openings into cellars etc. under streets, and pavement lights and ventilators.	Section 180 of the Highways Act 1980.
56. Power to sanction use of parts of buildings for storage of celluloid.	Section 1 of the Celluloid and Cinematograph Film Act 1922.
57. Power to approve meat product premises.	Regulations 4 and 5 of the Meat Products (Hygiene) Regulations 1994 (S.I. 1994/3082).
58. Power to approve premises for the production of minced meat or meat preparations.	Regulation 4 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 (S.I. 1995/3205).
59. Power to approve dairy establishments.	Regulations 6 and 7 of the Dairy Products (Hygiene) Regulations 1995 (S.I. 1995/1086).
60. Power to approve egg product establishments.	Regulation 5 of the Egg Products Regulations 1993 (S.I. 1993/1520).
61. Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.	Schedule 1A to the Food Safety (General Food Hygiene) Regulations 1995 (S.I. 1995/1763).
62. Power to approve fish products premises.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (S.I. 1998/994).
63. Power to approve dispatch or purification centres.	Regulation 11 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.

Function	Provision of Act or Statutory Instrument
64. Power to register fishing vessels on board which shrimps or molluscs are cooked.	Regulation 21 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
65. Power to approve factory vessels and fishery product establishments.	Regulation 24 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
66. Power to register auction and wholesale markets.	Regulation 26 of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.
67. Duty to keep register of food business premises.	Regulation 5 of the Food Premises (Registration) Regulations 1991 (S.I. 1991/2828).
72. Functions relating to the registration of common land and town or village greens.	Part 1 of the Commons Act 2006 (c.26) and the Commons Registration (England) Regulations 2008 (S.I. 2008/1961)
C. Functions relating to health and safety at work	
Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.	Part I of the Health and Safety at Work etc. Act 1974.
D. Functions relating to elections	
1. Duty to appoint an electoral registration officer.	Section 8(2) of the Representation of the People Act 1983.
2. Power to assign officers in relation to requisitions of the registration officer.	Section 52(4) of the Representation of the People Act 1983.
3. Functions in relation to parishes and parish councils.	Part II of the Local Government and Rating Act 1997 and

Function	Provision of Act or Statutory Instrument
	subordinate legislation under that Part.
4. Power to dissolve small parish councils.	Section 10 of the Local Government Act 1972.
5. Power to make orders for grouping parishes, dissolving groups and separating parishes from groups.	Section 11 of the Local Government Act 1972.
6. Duty to appoint returning officer for local government elections.	Section 35 of the Representation of the People Act 1983.
7. Duty to provide assistance at European Parliamentary elections.	Section 6/(7) and (8) of the European Parliamentary Elections Act 2002
8. Duty to divide constituency into polling districts.	Sections 18A to 18E of, and Schedule A1 to, the Representation of the People Act 1983.
9. Power to divide electoral divisions into polling districts at local government elections.	Section 31 of the Representation of the People Act 1983.
10. Powers in respect of holding of elections.	Section 39(4) of the Representation of the People Act 1983.
11. Power to pay expenses properly incurred by electoral registration officers.	Section 54 of the Representation of the People Act 1983.
12. Power to fill vacancies in the event of insufficient nominations.	Section 21 of the Representation of the People Act 1985.
13. Duty to declare vacancy in office in certain cases.	Section 86 of the Local Government Act 1972.
14. Duty to give public notice of a casual vacancy.	Section 87 of the Local Government Act 1972.
15. Power to make temporary appointments to parish councils.	Section 91 of the Local Government Act 1972.
16. Power to determine fees and conditions for supply of copies of, or extracts from, elections documents.	*Removed by the Local Authorities (Functions and Responsibilities) (England) (Amendment no. 4) Regulations 2007 No.2593*

Function	Provision of Act or Statutory Instrument
17. Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	Section 10 of the Representation of the People Act 2000.
18. Duty to consult on change of scheme for elections.	Sections 33(2), 38(2) and 40(2) of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act)
19. Duties relating to publicity.	Sections 35, 41 and 52 of the Local Government and Public Involvement in Health Act 2007.
20. Duties to give notice to Electoral Commission.	Section 36 and 42 of the Local Government and Public Involvement in Health Act 2007.
21. Power to alter years of ordinary elections of Parish Councillors.	Section 53 of the Local Government and Public Involvement in Health Act 2007.
22. Functions relating to change of name of electoral area.	Section 59 of the Local Government and Public Involvement in Health Act 2007.
E. Functions relating to name and status of areas and individuals	
1. Power to change the name of the county or district.	Section 74 of the Local Government Act 1972.
2. Power to change the name of a parish.	Section 75 of the Local Government Act 1972.
3. Power to confer title of honorary alderman or to admit to be an honorary freeman.	Section 249 of the Local Government Act 1972.
4. Power to petition for a charter to confer borough status.	Section 245b of the Local Government Act 1972.

Function	Provision of Act or Statutory Instrument
EB. Functions relating to community governance	
1. Duties relating to community governance reviews.	Section 79 of the 2007 Act.
2. Functions relating to community governance petitions.	Sections 80, 83 to 85 of the 2007 Act
3. Functions relating to terms of reference of review.	Sections 81(4) to (6)
4. Power to undertake a community governance review.	Section 82 of the 2007 Act
5. Functions relating to making of recommendations.	Sections 87 to 92 of the 2007 Act
6. Duties when undertaking review.	Section 93 to 95 of the 2007 Act
7. Duty to publicise outcome of review	Section 96 of the 2007 Act
8. Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1) of the 2007 Act
9. Power to make agreements about incidental matters.	Section 99 of the 2007 Act
F. Power to make, amend, revoke or re-enact byelaws	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978.
FA. Functions relating to smoke-free premises, etc	
1. Duty to enforce Chapter 1 and regulations made under it.	Section 10(3) of the Health Act 2006 (the 2006 Act)
2. Power to authorise officers.	Section 10(5) of, and paragraph 1 of Schedule 2 to, the 2006 Act
3. Functions relating to fixed penalty notices.	Paragraphs 13, 15 and 16 of Schedule 1 to the 2006 Act. Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 (S.I. 266/760)
4. Power to transfer enforcement functions to another enforcement	Smoke-free (Premises and Enforcement) Regulations 2006 (S.I.

Function	Provision of Act or Statutory Instrument
authority	2006/3368)
G. Power to promote or oppose local or personal Bills.	Section 239 of the Local Government Act 1972.
H. Functions relating to pensions etc.	
1. Functions relating to local government pensions, etc.	Regulations under section 7, 12 or 24 of the Superannuation Act 1972.
2. Functions under the 's Fire-fighters' Pension Scheme relating to pensions, etc. as respects persons employed by fire and rescue authorities pursuant to section 1 of Fire and Rescue Services Act 2004	Sections 34 and 36 of the Fire and Rescue Services Act 2004
I. Miscellaneous functions	
Part I: functions relating to public rights of way	
1. Power to create footpath or bridleway by agreement.	Section 25 of the Highways Act 1980.
2. Power to create footpaths and bridleways.	Section 26 of the Highways Act 1980.
3. Duty to keep register of information with respect to maps, statements and declarations.	Section 31A of the Highways Act 1980.
4. Power to stop up footpaths and bridleways.	Section 118 of the Highways Act 1980.
5. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
6. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.

Function	Provision of Act or Statutory Instrument
7. Power to make a special extinguishment order.	Section 118B of the Highways Act 1980.
8. Power to divert footpaths and bridleways.	Section 119 of the Highways Act 1980.
9. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
10. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
11. Power to make a special diversion order.	Section 119B of the Highways Act 1980.
12. Power to require applicant for order to enter into agreement.	Section 119C(3) of the Highways Act 1980.
13. Power to make an SSSI diversion order.	Section 119D of the Highways Act 1980.
14. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
15. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
16. Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
17. Duty to serve notice of proposed action in relation to obstruction.	Section 130A of the Highways Act 1980.
18. Power to apply for variation of order under section 130B of the Highways Act 1980.	Section 130B(7) of the Highways Act 1980.
19. Power to authorise temporary disturbance of surface of footpath or bridleway.	Section 135 of the Highways Act 1980.
20. Power temporarily to divert footpath or bridleway.	Section 135A of the Highways Act 1980.
21. Functions relating to the making good of damage and the removal of obstructions.	Section 135B of the Highways Act 1980.

Function	Provision of Act or Statutory Instrument
22. Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section 149 of the Highways Act 1980.
23. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981 (c. 67).
24. Duty to keep definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981.
25. Power to include modifications in other orders.	Section 53A of the Wildlife and Countryside Act 1981.
26. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.	Section 53B of the Wildlife and Countryside Act 1981.
27. Duty to reclassify roads used as public paths.	Section 54 of the Wildlife and Countryside Act 1981.
28. Power to prepare map and statement by way of consolidation of definitive map and statement.	Section 57A of the Wildlife and Countryside Act 1981.
29. Power to designate footpath as cycle track.	Section 3 of the Cycle Tracks Act 1984.
30. Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1981 (c. 68).
31. Power to authorise stopping-up or diversion of footpath or bridleway.	Section 257 of the Town and Country Planning Act 1990.
32. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.
33. Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000.
34. Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.

Function	Provision of Act or Statutory Instrument
Part II: other miscellaneous functions	
35. Functions relating to sea fisheries.	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966.
36. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972.
37. Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).	Section 112 of the Local Government Act 1972.
38. Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
39. Duty to make arrangements for proper administration of financial affairs etc.	Section 151 of the Local Government Act 1972.
40. Power to appoint officers for particular purposes (appointment of "proper officers").	Section 270(3) of the Local Government Act 1972.
41. Power to make limestone pavement order.	Section 34(2) of the Wildlife and Countryside Act 1981.
42. Power to make closing order with respect to take-away food shops.	Section 4 of the Local Government (Miscellaneous Provisions) Act 1982.
43. Duty to designate officer as the head of the authority's paid service, and to provide staff, etc.	Section 4(1) of the Local Government and Housing Act 1989.
44. Duty to designate officer as the monitoring officer, and to provide staff, etc.	Section 5(1) of the Local Government and Housing Act 1989.
44A Duty to provide staff, etc. to person nominated by monitoring officer.	Sections 82A(4) and (5) of the Local Government Act 2000
44B Powers relating to overview and scrutiny committees (voting rights of co-opted members)	Paragraphs 12 and 14 of Schedule 1 to the Local Government Act 2000

Function	Provision of Act or Statutory Instrument
45. Duty to approve authority's statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).	The Accounts and Audit Regulations 1996 (S.I. 1996/590).
46. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
47. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999/1892).
47A Powers relating to complaints about high hedges.	Part 8 of the Anti-Social Behaviour Act 2003
48. Power to make payments or provide other benefits in cases of maladministration etc.	Section 92 of the Local Government Act 2000.
49. Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption	Section 13 (2) of the Criminal Justice and Police Act 2001
50. Power to make or revoke an order designating a locality as an alcohol disorder zone.	Section 16 of the Violent Crime Reduction Act 2006
51. Power to apply for an enforcement order against unlawful works on common land.	Section 41 of the Commons Act 2006
52. Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference.	Section 45(2)(a) of the Commons Act 2006
53. Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens	Section 45(2)(b) of the Commons Act 2006

Function	Provision of Act or Statutory Instrument
J. Ancillary functions	
1. (a) Imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted: (i) in the exercise of a function specified above in column (1) of this Schedule; or (ii) otherwise than by the Executive in the exercise of any function under a local Act; and (b) Determining any other terms to which any such approval, consent, licence, permission or registration is subject.	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2.
2. Determining whether, and in what manner, to enforce: (a) any failure to comply with an approval, consent, licence, permission or registration granted as mentioned in paragraph 1(a) immediately above; (b) any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or (c) any other contravention in relation to a matter with regard to which the function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of the Executive	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2
3. (a) Amending, modifying or varying any such approval, consent, licence, permission or registration as is mentioned in paragraph 1(a) above, or any condition, limitation or term to which it is subject; or	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2

Function	Provision of Act or Statutory Instrument
(b) Revoking any such approval, consent, licence, permission or registration.	
K. Other functions	
1. Making any scheme authorised or required by regulations under section 18 (schemes for basic, attendance and special responsibility allowances for local authority members) of the Local Government and Housing Act 1989, or of amending, revoking or replacing any such scheme Note: The Council's functions mentioned in this paragraph may not be delegated.	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2
2. Subject to any provision of regulations under section 9EB (joint exercise of functions) of the Local Government Act 2000, the function of: (a) making arrangements for the discharge of functions by a committee or officer under section 101(5) of the Local Government Act 1972; and (b) making appointments under section 102 (appointment of committees) of that Act.	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2
3. Any function of a local authority which, by virtue of any enactment (including an enactment contained in a local Act or comprised in subordinate legislation) passed or made before 19 October 2000, may be discharged only by an authority (unless otherwise provided by The Local Authorities (Functions and Responsibilities) (England) Regulations 2000)	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 2

Function	Provision of Act or Statutory Instrument
4. (1) In connection with the discharge of the function: (a) of formulating or preparing a plan or strategy of a description specified in column (1) of Schedule 3 below; (b) of formulating a plan or strategy for the control of the authority's borrowing or capital expenditure or for determining the authority's minimum revenue provision; or (c) of formulating or preparing any other plan or strategy whose adoption or approval the Council has determined is to be a matter for the Council the following actions (i) the giving of instructions requiring the Executive to reconsider any draft plan or strategy submitted by the Executive for the authority's consideration; (ii) the amendment of any draft plan or strategy submitted by the Executive for the authority's consideration; (iii) the approval, for the purposes of public consultation in accordance with regulation 10 or 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999, of draft proposals associated with the preparation of alterations to, or the replacement of, a development plan (iv) the approval, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his/her approval, of any plan or strategy (whether or not in the form of a draft) of which any part is required to be so	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 4

Function	Provision of Act or Statutory Instrument
submitted; and (v) the adoption (with or without modification) of the plan or strategy. (2) The function of amending, modifying, revising, varying, withdrawing or revoking any plan or strategy of a description referred to in paragraph (1) above, save to the extent that the making of the amendment, modification, revision, variation, withdrawal or revocation is: (i) required for giving effect to requirements of the Secretary of State or a Minister of the Crown in relation to a plan or strategy submitted for his/her approval, or to any part so submitted; or (ii) authorised by a determination made by the authority when approving or adopting the plan or strategy, as the case may be; or (iii) recommend by the person carrying out, under Section 20 of the Planning and Compulsory Purchase Act 2004, an independent examination of a development plan document. Where (i) to (iii) apply then the amendment, modification, revision, variation, withdrawal or revocation is the responsibility of the Executive. Note: The Council functions specified in this paragraph cannot be delegated	

Function	Provision of Act or Statutory Instrument
5. (1) In connection with the discharge of the function of: (a) making a calculation in accordance with any of sections 32 to 37, 43 to 49, 52I, 52J, 52T and 52U of the Local Government Finance Act 1992, whether originally or by way of substitute; or (b) issuing a precept under Chapter IV of Part I of that Act, all functions **except** the following: (A) the preparation, for submission to the authority for their consideration, of: (i) estimates of the amounts to be aggregated in making the calculation or of other amounts to be used for the purposes of the calculation and estimates of the calculation; or (ii) the amounts required to be stated in the precept (B) the reconsideration of those estimates and amounts in accordance with the authority's requirements; (C) the submission for the authority's consideration of revised estimates and amounts.	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, Regulation 4
6. Any other function not listed above which has been (or in future becomes) a Council side function by virtue of any Act of Parliament or subordinate legislation, shall be deemed to be a Council function.	

Schedule 3 - Circumstances in Which Functions are Not to be the Responsibility of the Executive

(Note: Special rules apply in the case of urgency and these are set out in the Standing Orders relating to the Budget and Policy Framework.)

Function	Circumstances
1. The adoption or approval of a plan or strategy (whether statutory or non-statutory), other than a plan or strategy of a description referred to in regulation 4(1)(b) (a plan or strategy for the control of the authority's borrowing or capital expenditure) or Schedule 3 (the statutory plans and strategies) .	The authority determines that the decision whether the plan or strategy shall be adopted or approved shall be taken by them. Note: The Council's functions in these circumstances may not be delegated.
2. The determination of any matter in the discharge of a function which - (a) is the responsibility of the Executive; and (b) is concerned with the authority's budget, or their borrowing or capital expenditure.	The individual or body by whom, by virtue of any of sections 14 to 17 of the Local Government Act 2000 or provision made under section 18 or 20 of that Act, the determination is to be made: (a) is minded to determine the matter contrary to, or not wholly in accordance with: (i) the authority's budget; or (ii) the plan or strategy for the time being approved or adopted by the authority in relation to their borrowing or capital expenditure; and (b) is not authorised by the authority's Executive arrangements, financial regulations, standing orders or other rules or procedures to make a determination in those terms.

Function	Circumstances
3. The determination of any matter in the discharge of a function: (a) which is the responsibility of the Executive; and (b) in relation to which a plan or strategy (whether statutory or non-statutory) has been adopted or approved by the authority.	The individual or body by whom, by virtue of any of sections 14 to 17 of the Local Government Act 2000 or provision made under section 18 or 20 of that Act, the determination is to be made, is minded to determine the matter in terms contrary to the plan or, as the case may be, the strategy adopted or approved by the authority.

Schedule 4 – Terms of Reference

Overview and Scrutiny Board and Sub-committees, Regulatory and Other Committees, Area Committees, Working Parties and Other Bodies

Name and Terms of Reference	Membership
Audit Committee **Audit Activity:** 1. To consider the Head of Internal Audit's annual report and opinion, and a summary of Internal Audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements. 2. To approve, but not direct, the Internal Audit Strategy and annual audit plan ensuring that appropriate risk assessments have been carried out when formulating the internal audit plan and to monitor performance against the plan. 3. To review any revisions to the plan as advised by the Head of Internal Audit and agreed by the Director of Finance. 4. To review half yearly internal audit reports and the main issues arising and seek assurance from management that action has been taken, where necessary 5. To consider summaries of specific Internal Audit reports as requested. 6. To consider reports dealing with the management and performance of the providers of Internal Audit Services. 7. To consider a report from Internal Audit on agreed recommendations not implemented within a reasonable timescale. 8. To consider the External Auditor's Annual Letter, relevant reports, and the report to those charged with governance. 9. To consider specific reports as agreed with the External Auditor.	6 Members of the Council excluding Members of the Cabinet, in accordance with the political balance requirements. Normally chaired by an Opposition Member, where political balance allows. Conservative Group (3): Liberal Democrat Group (2): Independent Group (1): Non-voting Independent Member:

Name and Terms of Reference	Membership
10. To comment on the scope and depth of external audit work and to ensure it gives value for money. 11. To liaise with the Public Sector Audit Appointments Ltd over the appointment of the Council's external auditor. 12. To commission work from Internal and External Audit within approved resources. 13. To support the Council's compliance with the CIPFA Code of Practice for Treasury Management in Public Services including the role as nominated Committee to be responsible for ensuring effective scrutiny of the capital strategy, treasury management strategy and policies. **Regulatory Framework** 14. To maintain a strategic overview of the Council's Constitution in respect of contract procedure rules, financial regulations and codes of conduct and behaviour (the primary responsibility for considering and ensuring that the constitution is fit for purpose lies with the Monitoring Officer and the Standards Committee in relation to the codes of conduct). 15. To maintain a strategic overview of the Council's compliance with the prevailing Accounts and Audit Regulations. 16. To review any issue referred to it by the Chief Executive, a Director, the Monitoring officer, Section 151 Officer (Chief Finance Officer) or any Council body.	

Name and Terms of Reference	Membership
17. To monitor the effective development and operation of risk management and corporate governance in the Council and agree necessary actions to ensure compliance with best practice 18. To monitor the "Whistle blowing Policy" which meets the requirements of the Public Interest Disclosure Act 1998, to encourage employees to report suspected malpractice, fraud or crime by other staff, the public or organisations having dealings with the Council. 19. To approve and monitor the Council Policy on 'Counter Fraud and Corruption' and to be responsible for the Council's procedure for investigating and responding to complaints. 20. To consider the findings of reviews of the effectiveness of the system of internal control including the Annual Governance Statement and to recommend its adoption. 21. To oversee the Council's arrangements for corporate governance and consider necessary actions to ensure compliance with best practice. 22. To monitor the Council's compliance with its own and other published standards and controls. 23. To maintain a strategic overview of the Council's compliance with the Regulation of Investigatory Powers Act 2000 (RIPA). Accounts 24. To consider the External Auditor's report to those charged with governance on issues arising from the audit of the accounts.	

Name and Terms of Reference	**Membership**
25. On behalf of the Council, to consider and approve the annual statement of accounts. 26. To consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.	
Civic Committee: 1. To consider nominations for the title of Honorary Freeman and Honorary Alderman subject to, those individuals meeting the criteria as set out in Section 249 of the Local Government Act 1972 and by unanimous vote, make recommendations to the Council as to acceptance of any nominations. 2. To identify individuals to nominate for the King's Birthday Honours and New Years' Honours list subject to those individuals meeting the criteria as set out in Government guidance and by unanimous vote, request the Chief Executive to consider progressing applications for potential nominees.	4 Members of the Council in accordance with the political balance requirements Conservative Group (2): Liberal Democrat (2):
Employment Committee: 1. To make recommendations to Council on the appointment of the Head of Paid Service including the terms and conditions of his/her employment. 2. To determine appointments to post of Director or equivalent positions of the Council and senior management positions at Hay Grade 528 or above, or for the most senior management position where this is lower, for its wholly owned companies, including the terms and conditions of contracts, appointment procedures and arrangements. 3. To consider applications for the position of Coroner and to recommend to Council the person to be appointed to that post.	6 Members of the Council in accordance with the political balance requirements (to include a Cabinet Member) Conservative Group (3): Liberal Democrat Group (2): Independent Group (1):

Name and Terms of Reference	**Membership**
4. To hear and determine appeals in relation to disciplinary matters, in relation to dismissal. 5. To consider any matters referred by the Chief Executive on the appointment of Non-Executive Directors on Council owned companies. 6. To consider any matters referred by the Chief Executive on strategic matters relating to pay and conditions. 7. To consider any disciplinary or grievance matters in relation to the Chief Executive. 8. To consider and determine requests for Flexible Retirement from Senior Officers.	
Harbour Committee To determine all matters relating to the strategic management of the Council's function as a Harbour Authority as stipulated in The Port Good Governance Guidance, Tor Bay Harbour Port Masterplan and the Council's Policy Framework. Specifically, the Committee will:- 1. manage all of the Harbour's financial matters in accordance with The Port Good Governance Guidance, approved Council financial procedures and the Council's aspirations for the harbour to be self financing as outlined in the Tor Bay Harbour Port Masterplan and including (but not limited to): (a) the setting of harbour charges from time to time (including in-year changes to the schedule) normally following consultation with the relevant Harbour Liaison Forums and Director of Finance	6 Members of the Council in accordance with the political balance requirements, plus up to five external non-voting advisors appointed by the Committee on a four year term. (Group Leaders will be asked to take account of the geographical spread of Members in making appointments to the Committee) Conservative Group (3): Liberal Democrat Group (3):

Name and Terms of Reference	Membership
(b) to make recommendations to the Cabinet on the annual ring-fenced Harbour revenue budget to form part of the Cabinet's overall recommendations to the Council on the Annual Revenue budget; (c) receiving quarterly budget monitoring reports and to approve variances as appropriate; and (d) monitoring the harbour reserve funds and to seek to ensure that the funds are kept above an appropriate minimum contingency level and ensure the harbour remains self-financing; 2. to act as Duty Holder for the purposes of the Port Marine Safety Code, the accountability for which cannot be assigned or delegated; 3. approve and monitor a business plan for Tor Bay Harbour, in line with the Council's policy framework, and address any issues relating to performance; 4. review these terms of reference annually and request the Council to make any necessary amendments and/or additions; 5. review annually the powers delegated to the Head of Tor Bay Harbour Authority and refer any proposed changes to the Council for determination. The Committee itself shall not authorise any changes; 6. consider any other matters referred to the Committee by the Head of Tor Bay Harbour Authority; 7. establish any sub-committee or working parties as the Committee sees fit; 8. recommend the format, composition and governance of the Harbour Liaison Forums and keep the arrangements under review;	

Name and Terms of Reference	**Membership**
9. to provide strategic direction to the Head of Tor Bay Harbour Authority and the Cabinet in relation to those assets within Tor Bay Harbour and the harbour estate that are managed by Tor Bay Harbour Authority; and 10. appoint advisors following receipt of recommendations from the Harbour Appointments Sub-Committee. Appointments will be merit based and be in accordance with the Local Protocol for Members of the Harbour Committee.	
Harbour Appointments Sub-Committee 1. To consider ad hoc applications for external advisor positions on the Harbour Committee and recommend to the Harbour Committee the persons who should be appointed to those posts as and when vacancies arise, and to determine the rolling programme for advisors' tenure.	5 Members of the Council in accordance with the political balance requirements to include the Chair and Vice-Chair of the Harbour Committee appointed from the Harbour Committee. Conservative (3): Liberal Democrat (2):
Health and Wellbeing Board 1. To encourage those who arrange for the provision of any health or social care services in the area to work in an integrated manner for the purpose of advancing the health and wellbeing of the people in its area. 2. To provide advice, assistance and support, as it thinks appropriate for the purpose of encouraging the making of arrangements under Section 75 (arrangements between NHS bodies and local authorities) of the National Health Service Act 2006 in connection with the provision of such services. 3. To encourage those who arrange for the provision of health-related services in its area to work closely with the Health and Wellbeing Board.	Leader of the Council or their nominee Director of Adults and Community Services; Director of Children's Services; Director of Public Health; A representative of Healthwatch Torbay; A representative of Devon Integrated Care Board; A representative of NHS England;

Name and Terms of Reference	Membership
4. To encourage those who arrange for the provision of any health or social care services in its area and those who arrange for the provision of any health-related services in its area to work closely together. 5. To exercise the functions of Torbay Council and South Devon and Torbay Clinical Commissioning Group under sections 116 (health and social care: joint strategic needs assessments) and 116A (health and social care: joint health and wellbeing strategy) of the Local Government and Public Involvement in Health Act 2007, namely: • Preparation of a Joint Strategic Needs Assessment; and • Preparation of a Joint Health and Wellbeing Strategy. 6. To assess needs for pharmaceutical services in Torbay and publish a statement of its first assessment and of any revised assessment. 7. To provide the Council its opinion on whether the local authority is discharging its duty under section 116B (duty to have regard to assessment and strategies) of the Local Government and Public Involvement in Health Act 2007. 8. To exercise the statutory duty to promote co-operation between Torbay Council, its relevant partners and other partners or bodies as the Council considers appropriate, to improve the well-being of children in the area. 9. To consider the annual report of the Torbay Safeguarding Children's Board. 10. To make any decisions that legislation or government guidance reserves to Health and Wellbeing Board's and/or proposes that Health and Wellbeing Boards would be appropriate forum for such decisions to be made.	Cabinet Member for Children's Services; Torbay and South Devon NHS Foundation Trust; Devon Partnership NHS Trust; Torbay Community Development Trust; Chair of Safer Communities Torbay; Chair of Torbay Safeguarding Children Board; Chair of Torbay Safeguarding Adults Board; Representative from Devon and Cornwall Police; Divisional Director for Community and Customer Services; Representative of the Ageing Well Assembly; Representative of Primary Care; Representative of the Department for Work and Pensions; Representative of Torbay Schools.

Name and Terms of Reference	**Membership**
Statutory Licensing Committee: 1. To discharge the functions of the Council as a Licensing Authority, with the exception of approving the Gambling and Statement of Licensing Policy which is function of the Council. 2. To approve future reviews and adoption of the Cumulative Impact Assessment. Since the introduction of section 5A of the Licensing Act 2003, all matters regarding Cumulative Impact Assessments are now the responsibility of the statutory Licensing Committee, by virtue of section 7(1), as it is no longer part of the Licensing Act 2003 Statement of Policy.	10 Members of the Council. (Note: Under the Licensing Act 2003 this Committee must be between 10 and 15 Members and is not required to be politically balanced) Conservative Group (5): Liberal Democrat Group (4): Independent Group (1):
Statutory Licensing Sub-Committee To consider and determine all matters in connection with licensing applications (including those set out in the Statement of Licensing Policy and Gambling Act Policy/Statement of Principles).	To comprise 3 Members of the Statutory Licensing Committee.
Regulatory Committee To discharge the functions contained in schedule 101 and 102 of the Local Government Act 1972.	10 Members of the Council in accordance with the political balance requirements Conservative Group (4): Liberal Democrat Group (4): Independent Group (1): Independent (1):

Name and Terms of Reference	**Membership**
Regulatory Sub-Committee To consider and determine all matters in connection with Hackney Carriage and Private Hire Licences, Sex Establishment Licences, Street Trading Licences and Consents.	To comprise 3 Members of the Regulatory Committee
Overview and Scrutiny Board: 1. To approve and co-ordinate the work programme for the overview and scrutiny function for the year. 2. To appoint sub-committees and/or working parties to perform the overview and scrutiny function (the Membership of such bodies to be in accordance with Standing Order D2 in relation to Overview and Scrutiny). 3. To review or scrutinise decisions made, or other action taken, in connection with the discharge of functions which are the responsibility of the Cabinet. 4. To make reports or recommendations to the Authority or the Cabinet with respect to the discharge of functions which are the responsibility of the Cabinet. 5. To make reports or recommendations to the Authority or the Cabinet with respect to the discharge of functions which are not the responsibility of the Cabinet. 6. To make reports or recommendations to the Authority or the Cabinet or the Council's partner authorities (as defined by the Local Government and Public Involvement in Health Act 2007) on matters which affect the Authority's area or the inhabitants of that area. 7. To consider all matters and issues arising from the Council's power to review or scrutinise decisions made, or other action taken, in connection with the	10 Members of the Council in accordance with the political balance requirements (including the Overview and Scrutiny Co-ordinator and Overview and Scrutiny Lead Members) excluding Members of the Cabinet and the Chair of the Council plus 2 Diocesan and 2 Parent Governor Representatives Normally chaired by an Opposition Member, where political balance allows Conservative Group (5): Liberal Democrat Group (4): Independent Group (1):

Name and Terms of Reference	Membership
discharge by the responsible authorities of their crime and disorder functions in accordance with the Police and Justice Act 2006. 8. To review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority's area in accordance with Flood and Water Management Act 2010.	
Adult Social Care and Health Overview and Scrutiny Sub-Board: 1. to review how the needs and interests of adults are met by all departments, policies, services and decisions; and how performance is evaluated and improved; 2. to review universal, targeted and specialist services for adults including: • prevention and management of risk; • social care; • adults wellbeing; • education – supporting and enabling learning for adults; • internal and external partnership working for adults; • supporting adults and carers; and • relevant financial management; 3. 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, the National Health Service Act 2006 and Health and Social Care Act 2012; 4. to assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity; and	This is a Sub-Committee of the Overview and Scrutiny Board and comprises 5 Members of the Council in accordance with the political balance requirements (excluding Members of the Cabinet), Chaired by the Scrutiny Lead for Adult Services and Health. Conservative Group (3): Liberal Democrat Group (2): **Non-Voting Co-opted Members:** Healthwatch (1): Chair of Voluntary Sector Network (1):

Name and Terms of Reference	**Membership**
5. to make reports and recommendations as appropriate arising from this area of overview and scrutiny.	
Children and Young People's Overview and Scrutiny Sub-Board: 1. to review how the needs and interests of children and young people are met by all departments, policies, services and decisions; and how performance is evaluated and improved; 2. to review universal, targeted and specialist services for children and young people including: • prevention and management of risk; • social care; • children's and young people's wellbeing; • education – supporting and enabling learning for all children and young people; • internal and external partnership working for children and young people; • supporting parents and families; and • relevant financial management; 3. to assess the effectiveness of decisions of the Cabinet in these areas of the Council's statutory activity; and 4. to make reports and recommendations as appropriate arising from this area of overview and scrutiny.	This is a Sub-Committee of the Overview and Scrutiny Board and comprises 5 Members of the Council in accordance with the political balance requirements (excluding Members of the Cabinet), Chaired by the Scrutiny Lead for Children's Services. Conservative Group (3): Liberal Democrat Group (2): **Statutory Education Co-opted Members:** Statutory parent governor representatives (primary, secondary and academy trust) (3): Statutory Church of England representative (1): Statutory Roman Catholic Diocesan representative (1): **Non-Voting Co-opted Members:**

Name and Terms of Reference	**Membership**
	Devon and Cornwall Police representative (1): Voluntary and Community Sector and Alternative Provider (Education) representative (1): Representatives from the Children in Care Council, Special Educational Needs and Disabilities (SEND) Youth Forum or Young Person's Panel to participate in meetings where there are specific areas of interest to them.
Planning Committee: 1. At all times to have regard to the Development Plan (as defined in S.38 of the Planning and Compulsory Purchase Act 2004) for Torbay. 2. To consider and (if appropriate) determine (unless such determination is reserved by law to 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, including • Conservation Areas • Listed Buildings • Scheduled Ancient Monuments • The display of advertisements	8 Members of the Council (excluding the Cabinet Lead with responsibility for Planning, in accordance with the political balance requirements) with Membership comprising, if reasonably possible, Members from the various areas of the Borough Conservative Group (4): Liberal Democrat Group (4):

Name and Terms of Reference	**Membership**
• Tree Preservation Orders • Complaints about high hedges • Public Rights of Way • Minerals • Highways matters • Waste • Enforcement; and • Environmental Assessment so far as they are set out in Schedule 2 of this Part 3 of the Constitution (Council Functions) or are identified as Council functions in Schedule 1 of this Part 3 (Local Choice Functions): i.e. so far as they are not Executive functions. 3. The Committee shall not determine any application (or other matter) in a manner that would (in the opinion of the Divisional Director Planning, Housing and Climate Emergency or the opinion of the Director of Pride in Place) not be in accordance with the Development Plan for Torbay unless they recommend such determination and the determination is consistent with the Divisional Director's recommendation. If, contrary to officer recommendation, the Committee consider that an application (or other matter) shall be determined not in accordance with the Development Plan for Torbay then (unless their determination is consistent with the recommendation of the Divisional Director Planning, Housing and Climate Emergency) the item shall be referred to Council for determination.	
Standards Committee: 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.	5 Members of Torbay Council in accordance with the political balance requirements Conservative Group (2):

Name and Terms of Reference	**Membership**
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 assist the Monitoring Officer in carrying out his/her responsibilities pursuant to the Code of Conduct and its protocols. 7. To review the Council's local protocols as contained in the Constitution. 8. To review the Constitution in relation to ethics and probity issues. 9. To advise others on probity and ethics. 10. To consider any alleged breaches of local protocols by Members. 11. 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.	Liberal Democrat Group (2): Independent Group (1):
Community Asset Transfer Panel To assess applications made at Stage 1 and Stage 2 of the Community Asset Transfer process in accordance with the criteria set out in the Community Asset Transfer Policy.	5 Members of the Council in accordance with the political balance requirements, to include the appropriate Cabinet Member Conservative Group (3): Liberal Democrat Group (2):

Name and Terms of Reference	Membership
Corporate Parenting Board 1. To provide a forum for regular, detailed discussions of issues in relation to, and a positive link with, our Children Looked After, in accordance with the Council's Children Looked After and Corporate Parenting Strategy.	5 Members of the Council in accordance with the political balance requirements (plus the Leader of the Council as a contributing Member) Conservative Group (2): Liberal Democrat Group (2): Independent Member (1):
Cabinet Regeneration and Capital Projects Working Party 1. To receive detailed briefings on the Council's overarching Regeneration Programme and the Council's work with its Regeneration Partner. 2. To receive detailed briefings on capital projects, to ensure Members have up to date information on key capital projects and be aware of upcoming project milestones and future Council decisions related to the overall Programme and to allow officers to seek Members views (individual and collective) on certain project elements where options are available.	6 Members of the Council in accordance with the political balance requirements (to include the Cabinet Member for Finance) appointed by Cabinet Conservative Group (3): Liberal Democrat Group (2): Independent Member (1):
Cabinet Oldway Working Party To review proposals for use of buildings and grounds and oversee delivery of works from allocated monies. To ascertain community views in respect of these matters with relevant Members from the local community and representatives from the business, public and voluntary sectors are to be invited to meetings when needed.	6 Members of the Council in accordance with the political balance requirements (to include the Cabinet Members for Place Development and Economic Growth) appointed by Cabinet Conservative Group (3):

Name and Terms of Reference	Membership
	Liberal Democrat Group (2): Independent Member (1):
Cabinet Road Network and Travel Working Party To consider current and emerging road network and travel matters (encompassing all forms of transportation around the Bay and parking) and make recommendations to the appropriate decision maker.	6 Members of the Council in accordance with the political balance requirements (to include the Cabinet Member for Pride in Place, Transport and Parking) appointed by Cabinet Conservative Group (3): Liberal Democrat Group (2): Independent Member (1):
Harbour Asset Working Party (plus external advisors) 1. To review all assets within Tor Bay Harbour and the Harbour Estate. 2. To establish how each asset is performing. 3. To identify any assets that are surplus.	4 Members of the Council in accordance with the political balance requirements (Membership restricted to Harbour Committee Members) Conservative Group (2): Liberal Democrat Group (2):
Harbour Budget Working Party (plus external advisors) 1. To scrutinise the draft Tor Bay Harbour Authority budget prior to presentation to the Harbour Committee and to review the full range of harbour charges.	4 Members of the Council in accordance with the political balance requirements (Membership restricted to Harbour Committee Members)

Name and Terms of Reference	**Membership**
2. To assist Officers to monitor and review the budget ahead of each quarterly Harbour Committee meeting.	Conservative Group (2): Liberal Democrat Group (2):
Local Plan Working Party To assist Officers with the preparation of the revised draft Local Plan including the content, timing and scope of key consultation and submission documents in accordance with the timetable as set by the Local Development Scheme (or similar document required by subsequent legislation); to make appropriate recommendations to Cabinet and Council; and to respond to issues that may arise during examination.	6 Members of the Council in accordance with the political balance requirements (to include the Cabinet Members for Place Development and Economic Growth), appointed by Council Conservative Group (3): Liberal Democrat Group (2): Independent Member (1):

Schedule 5 - Scheme of Delegation of Executive Functions to the Cabinet, Committees of the Cabinet and Officers

This report is presented to the Adjourned Annual meeting of Council on 14 May 2026 in accordance with Standing Order C4.2(a) for inclusion in the Council's Scheme of Delegation (Schedule 5 of Part 3) of the Constitution of Torbay Council.

1. The names, addresses and wards of the people appointed to the Cabinet by the Leader of the Council are set out below:

Name	Address	Electoral Ward
Cabinet Member for Place Development and Economic Growth and Deputy Leader – Councillor Chris Lewis	Torbay Council Town Hall Torquay TQ1 3DR	Preston
Cabinet Member for Pride in Place, Transport and Parking – Councillor Billings	Torbay Council Town Hall Castle Circus Torquay TQ1 3DR	Churston with Galmpton
Cabinet Member for Housing, and Finance – Councillor Tyerman	Torbay Council Town Hall Torquay TQ1 3DR	Churston with Galmpton
Cabinet Member for Adult and Community Services, Public Health and Inequalities – Councillor Tranter	Torbay Council Town Hall Torquay TQ1 3DR	Goodrington with Roselands
Cabinet Member for Children's Services - Councillor Bye	Torbay Council Town Hall Torquay TQ1 3DR	Wellswood
Cabinet Member for Tourism, Culture & Events and Corporate Services – Councillor Jackie Thomas	Torbay Council Town Hall Torquay TQ1 3DR	Kings Ash

2. The Cabinet will carry out all the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution. Executive functions will be exercised collectively unless the Leader of the Council directs otherwise in accordance with Article 6.06 of the Constitution.

Cabinet Member	**Service Areas**
Leader of the Council Councillor David Thomas	Oversight of all areas Strategy and Place Leader, Regional Policy and external relations
Cabinet Member for Place Development and Economic Growth and Deputy Leader Councillor Chris Lewis	Asset Management Services, Economic Growth, Development Management, Strategic Planning (excluding Transport), Building Control and Climate Emergency
Cabinet Member for Pride in Place, Transport and Parking Councillor Billings	SWISCo Services Harbours, Beaches, Transport and Parking
Cabinet Member for Housing and Finance Councillor Tyerman	Housing, Finance, Procurement, Debt Recovery, Council Tax, Business Rates,
Cabinet Member for Adult and Community Services, Public Health and Inequalities Councillor Tranter	Adult Social Care delivery Adult Social Care Inspection regime Market Management Customer Services Housing Standards Housing Options Anti Social Behaviour and Vulnerability Public Health Improvement Health Protection Equalities (Directorate crossing)
Cabinet Member for Children's Services Councillor Bye	Children's Social Care Education Youth Justice

Cabinet Member	**Service Areas**
Cabinet Member for Tourism, Events & Culture and Corporate Services Councillor Jackie Thomas	Tourism, Culture & Events, Legal, IT, Business Improvement and Change, Libraries, Coroner, Emergency Planning, Health and Safety, Policy, Performance and Community Engagement, Governance, Human Resources

3. No executive functions have been delegated to area committees, any other authority or any joint arrangements at the present time.

4. The Leader of the Council has also (so far as lawful) delegated to officers the discharge of those functions that are referred to in Schedule 7 and are executive functions in the manner set out in that Schedule, in accordance with (and subject to) the Council's Standing Orders in relation to the Cabinet.

5. So far as the Constitution requires officers to consult with "the relevant member", the areas of responsibility of the Cabinet Members are as set out paragraph 2 above.

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Officer Scheme of Delegation

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Definitions

"Council"	includes all Committees and Sub-Committees of the Council unless the context requires otherwise
"Council Function"	means a function on which the responsibility of the Council has been delegated by the Council
"Cabinet"	includes the Leader of the Council, all Committees of the Cabinet and any individual member of the Cabinet to whom the Leader of the Council has delegated decision making power (where applicable) unless the context requires otherwise
"Executive function"	means a function that is the responsibility of the Leader of the Council (where applicable) or has been delegated by the Leader of the Council, or a member or committee, of his Cabinet (where applicable)

"Cabinet member/s"	includes the Leader of the Council unless the context requires otherwise
"Officer"	includes employees of the Council, persons seconded to the Council, agency workers and permanent employees of companies that are wholly-owned by the Council.
"relevant member"	means: For Executive Functions the Leader of the Council (where applicable) or any Cabinet member to whom he/she has delegated the relevant function (where applicable); and For Council functions: the Chair of the appropriate Committee where the decision to be taken is within the power of the Committee; Or the Civic Mayor (where no single political group has more than 18 elected members); Or the Leader of the political group that comprises more than 18 elected members. This may mean more than one member where the context or nature of decision made so requires. Where the person referred to above is absent or has a pecuniary interest or a conflict of interest in the matter or is precluded by law from acting, the expression "relevant member" shall mean the Deputy Leader, Vice-Chair, Deputy Civic Mayor or Deputy Group Leader as applicable.

General Delegations

	Description	Responsibility delegated by
1.	**General scheme of delegation**	
1.1	In managing the services and functions for which they are responsible Directors, Divisional Directors and Heads of Service shall be authorised to take any decisions (including any Key Decisions) and to exercise all legal powers relevant to those services and functions. Except Divisional Directors and Heads of Service shall not be authorised to take any decisions where they are expressly delegated to the Chief Executive, a specific Director, Divisional Director or Head of Service in this Scheme of Delegation unless so expressly delegated specifically to them.	Council/Cabinet
1.2	This authorisation shall include (but not be limited to) any decisions in relation to the budget for and resources (including employees) allocated to those service/s and function/s for which they are responsible, from time to time.	Council/Cabinet
1.3	To commission and award contracts in order to fulfil the powers, functions and duties of the service for which the Chief Executive, Director, Divisional Director or budget holder is responsible, where expenditure to do so is included in the approved revenue budget and where the contract value is up to £50,000 per annum and the total value for the contract does not exceed £200,000; the award of contracts above £50,000 per annum or with a total value for the duration of the contract between £200,001 and £500,000 is subject to approval in consultation with the relevant member (or in their absence the Leader of the Council or in his/her absence the Deputy Leader of the Council). Contracts with a total value above £500,000 which are not due to be included in the Capital Plan are to be submitted to Cabinet or Council (where budget is not already approved) for approval to go out to tender. Where approval in consultation with the relevant member, or by Cabinet or Council is given to undertake the tendering, the Chief Executive, Director, Divisional Director or budget holder has the authority to award the resultant contract. Tenders relating to projects which will ultimately be approved by Council for inclusion in the Capital Plan shall be progressed in consultation with the Director of Finance. But this paragraph shall not prevent the Chief Executive, Directors, Divisional Directors and Heads of Service tendering for and subsequently authorising the	Cabinet

	Description	**Responsibility delegated by**
	acceptance of any tenders for goods or services where they are pursuant to the Council's approved Capital Programme. (Note: The limitations in this paragraph shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	
1.4	Where the areas of responsibility and powers of an employee refer to specific Acts of Parliament, Regulations, Orders or guidance any subsequent re-enactment or amendment of the same shall apply.	not applicable
1.5	To retain contract staff or appoint consultants on matters related to their areas of responsibility.	Council/Cabinet
1.6	To make any decisions related to staff matters within their business unit in accordance with Council policy.	Council
1.7	So far as is lawful, Directors, Divisional Directors and Heads of Service may delegate (in such manner as is considered appropriate) matters within the services and functions for which they are responsible to officers within their portfolio/business unit or to other Directors, Divisional Directors or Heads of Service. Any such delegations may be revoked, varied or subject to such limitations as the delegating Director, Divisional Director or Head of Service considers appropriate.	not applicable
1.8	A Director or Divisional Director (following consultation with the Chief Executive and the relevant Head of Service) may (by written notice (including email)) withdraw (either permanently or temporarily) any of the above powers delegated to any Head of Service within his/her portfolio and/or impose restrictions or conditions upon the exercise of any of the above powers by that Head of Service. However, this paragraph shall not apply in relation to the following: (a) the Council's Monitoring Officer when acting in that capacity; (b) the Head of Tor Bay Harbour Authority and Tor Bay Harbour Master when exercising	not applicable

Description		Responsibility delegated by
	powers or duties expressly reserved to him/her by law in respect of the Harbour Authority; and (c) any other officer when exercising powers or duties expressly reserved to him/her by law.	
1.9	Directors and Divisional Directors are authorised to carry out an internal review of a decision to include an asset of community value on the List (Section 92, LA 2011) provided that they have not been involved with the original decision to list the asset.	
2.	**Limitations on delegations to the Chief Executive, Directors and Divisional Directors, Heads of Service and all other officers**	
2.1	No decision shall be taken by any officer under this Scheme of Delegation if any relevant member or the Chief Executive requests that the matter shall be referred to the Council or the Cabinet (whichever shall be able to take the decision in question) or to the Chief Executive. (Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Council/Cabinet
2.2	All decisions shall be in accordance with the law. Whether or not any decision is contrary to the Council's Constitution may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Monitoring Officer reasonably considers it to be contrary to the law.	No applicable

	Description	Responsibility delegated by
2.3	All decisions shall be in accordance with the Constitution and the Policy Framework of the Council and any other Policy of the Council which has been approved by Members. Whether or not any decision or action falls within the Policy Framework may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Monitoring Officer reasonably considers it to be contrary to the Policy Framework or contrary to a Policy approved by Members. (Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Council and Cabinet
2.4	All decisions shall be in accordance with the Council's Budget and Financial Regulations and Contracts Procedures. Whether or not any decision or action falls within the Budget and Financial Regulations may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee if the Chief Finance Officer or the Monitoring Officer reasonably considers it to be contrary to the Budget or Financial Regulations. (Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Council
2.5	All decisions relating to the expenditure of unbudgeted additional income, or lower than budgeted expenditure shall be in accordance with the Financial Regulations and Contracts Procedures.	Council/Cabinet

	Description	Responsibility delegated by
	(Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	
2.6	All decisions shall be in accordance with the Council's Standing Orders. Whether or not any decision or action is in accordance with the Council's Standing Orders may, if necessary, be determined by the Council. However, no decision or action shall be taken by any employee which the Monitoring Officer reasonably considers to be contrary to the Council's Standing Orders. (Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Council
2.7	In relation to the authorisation of the institution, defence or conduct of legal proceedings no decision shall be taken without prior consultation with the Head of Legal Services and no such action shall be taken that is contrary to or not in accordance with any instruction from the Head of Legal Services.	Council/Cabinet
2.8	Before exercising (or deciding not to exercise) any delegated powers all employees shall undertake appropriate internal consultation. This consultation shall normally include (but not be limited to) the following:	Council/Cabinet
2.8.1	Where the proposal may have implications relating to the Council's Corporate Plan, consultation with all relevant Members and the Chief Executive;	Council/Cabinet
2.8.2	Where the proposal may have any policy implications, or any significant service implications, consultation with all relevant Members and the Chief Executive;	Council/Cabinet
2.8.3	Where the proposal might reasonably be regarded as unusual or highly contentious, or involve an uncertain	Council/Cabinet

	Description	Responsibility delegated by
	outcome, or has been the subject of (or is likely to result in) an allegation of maladministration being made against the Council, consultation with the relevant Member, the Chief Executive and appropriate other senior officers;	
2.8.4	Where the proposal has any legal implications, consultation with the relevant Member and the Head of Legal Services and Monitoring Officer;	Council/Cabinet
2.8.5	Where the proposal may have significant implications for any particular Ward, consultation with all the Members representing that Ward;	Council
2.8.6	Where the proposal may have any financial or audit (whether internal or external) implications, or any property implications, consultation with the Chief Finance Officer;	Council/Cabinet
2.8.7	Where the proposal may have any constitutional implications, consultation with the Monitoring Officer;	Council
2.8.8	Where the proposal may have any implications relating to the Council's insurance policies (or the ability of the Council to obtain insurance at reasonable rates in the future), consultation with the Head of Legal Services;	Council/Cabinet
2.8.9	Where the proposal may have any health and safety implications for the public or employees, consultation with the Director of Corporate Services;	Council/Cabinet
2.8.10	Where the proposal may have any human resources implications, consultation with the Head of Human Resources;	Council
2.8.11	Where the proposal may have any equalities implications, consultation with the Director of Corporate Services;	Council/Cabinet
2.8.12	Where the proposal may have any implications for another Council business unit, consultation with the relevant Director, Divisional Director and Head of Service;	Council/Cabinet

	Description	Responsibility delegated by
2.8.13	Where any relevant Member, Director, Divisional Director or Head of Service has expressed opposition to a proposal, consultation with the Chief Executive;	Council/Cabinet
2.8.14	Where the proposal is similar to a previous matter that has been the subject of consultation with any Member (or which a Member has expressed a desire to be consulted about), consultation with that Member;	Council/Cabinet
2.8.15	Where the delegated power is expressly required to be exercised in consultation with one or more Community Partnership, the Community Partnership(s) specified in the decision to delegate;	Council/Cabinet
2.8.16	Where the proposal may have significant implications for one or more Community Partnerships, consultation with those Community Partnerships affected; and	Council/Cabinet
2.8.17	In any cases of doubt, consultation with the relevant Member. (Note: The limitations in 2.8 and associated sub-paragraphs shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall be made in consultation the designated lead Member of the Senior Leadership Team or Chair of the Incident Management Team and follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Council/Cabinet
2.9	Freehold property acquisitions and disposals may not be authorised where in the reasonable opinion of a fellow or member of the Royal Institute of Charter Surveyors (RICS) the estimated market value of the land or property being acquired or disposed of exceeds £50,000 or (if a transaction is linked to another transaction) where the aggregate estimated value exceeds that amount (this includes disposals at a peppercorn rate). But this paragraph shall not prevent the Chief Executive, Directors and Divisional Directors authorising land/property acquisitions and freehold disposals where they are in accordance with the Council's Capital Programme or an express Council decision.	Cabinet

	Description	Responsibility delegated by
	(Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	
2.10	The Chief Executive, Directors and Divisional Directors and Heads of Service may not authorise leases if, in the reasonable opinion of a Fellow or Member of the Royal Institution of Chartered Surveyors (RICS), the market value of the premium exceeds £50,000 or if the market value of the rent (including any service charge) should exceed £50,000 per year, or (if a transaction is linked to another transaction) where the aggregate relevant amounts exceeds those limits (this includes leases at a peppercorn rent). But this paragraph shall not prevent the Chief Executive, Directors, Divisional Directors and Heads of Service authorising leasehold disposals where they are in accordance with the Council's Capital Programme or a Council or Cabinet decision. (Note: This limitation shall not apply to decisions connected to the Council's emergency response and/or recovery in relation to any matters which deal with civil protection. The emergency response shall be triggered by the Local Resilience Forum declaring a major incident. Decisions connected to emergency response and/or recovery shall follow the limitations on financial delegation arrangements outlined in 2.12 below.)	Cabinet
2.11	No decision shall be taken that is contrary to the terms of any specific delegations whether in this Scheme or made by Council (or a Council Committee or Sub-Committee) or the Cabinet, or an employee of the Council.	Not applicable
2.12	Decisions in relation to the Council's response or recovery to an emergency which involve expenditure above £50,000 or a reduction in income of £5,000 per annum shall be only be approved by the Chief Executive, or the Chief Finance Officer (or his/her designated deputies).	

Specific Delegations

	Description	Responsibility delegated by
1.	**Delegations to the Chief Executive**	
1.1	To advise the Cabinet and Council on policy development, the overall strategic direction and corporate governance of the Council.	Council/Cabinet
1.2	To act as the Council's Head of Paid Service under section 4(1) of the Local Government and Housing Act 1989.	Council
1.3	To determine the organisation and management of the Council's employees.	Council
1.4	To determine the appointment of all officers (excluding the Head of Paid Service and Directors or equivalent positions so far as that power has been specifically reserved to be exercised by the Employment Committee).	Council
1.5	To determine the terms and conditions of employment of all officers (excluding the Head of Paid Service and Directors or equivalent so far as that power has been specifically reserved to be exercised by the Employment Committee).	Council
1.6	To determine the appointment of non-Executive Directors on Boards of the Council's wholly owned companies on behalf of the Council, in consultation with the Group Leaders.	Council
1.7	To be responsible for taking disciplinary action (including dismissal) in respect of any officer (except the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer).	Council
1.8	To be responsible for appropriate management arrangements across the Council including the co-ordination of functions and to resolve disputes between business units.	Council
1.9	In consultation with the relevant Member to (by written notice) change the allocation of responsibilities for services and functions between Directors, Divisional Directors and Heads of Service.	Council/Cabinet

	Description	Responsibility delegated by
1.10	To exercise any powers delegated to any Director, Divisional Director and/or Head of Service, subject to the limitations outlined above.	Council/Cabinet
1.11	In consultation with the relevant Member to (by written notice) withdraw any powers delegated to any Director, Divisional Director and/or Head of Service.	Council/Cabinet
1.12	In managing the services and functions for which he/she is directly responsible to take any decisions (including any Key Decisions) and to exercise all legal powers relevant to those services and functions, subject to the limitations outlined above.	Council/Cabinet
1.13	To retain contract staff or appoint consultants on matters related to the management of the Council.	Council/Cabinet
1.14	So far as is lawful, to delegate (in such manner in which he or she considers appropriate) to any other officer responsibility for any matters for which he/she is responsible. Any such delegations may be revoked, varied or subject to such limitations as the Chief Executive considers appropriate.	not applicable
1.15	To handle complaints made against the Council (including Ombudsman complaints) and (following consultation with the relevant Member) to settle complaints locally.	Council/Cabinet
1.16	To represent the interests of the Council to the community, local interest groups and external agencies.	Council/Cabinet
1.17	In consultation with the relevant Member, to deal with all matters in connection with the media and public relations including issuing press releases on behalf of the Council.	Council/ Cabinet
1.18	In consultation with the relevant Member, to respond on behalf of the Council to Government and other consultation exercises in relation to proposed legislation and other matters relevant to the Council.	Council/Cabinet
1.19	To approve (in consultation with the relevant Member) all civic and ceremonial arrangements including in relation to twinning.	Council/Cabinet

	Description	**Responsibility delegated by**
1.20	Where the Chief Executive is of the opinion that as a matter of urgency any decision in relation to a Council function shall be taken in the best interests of either the Council or the inhabitants of the Borough and it is not in his/her opinion reasonably practicable to convene a meeting of the Council to consider the matter he/she may take such decisions, as he/she considers necessary, following consultation with the Leader of the Council and Group Leaders. The decision will also be communicated to all Members as soon as practicable after the decision has been taken. He/she will also submit to a meeting of the Council a written report of any action taken under this paragraph 1.19 (and the reasons for that action and the alternative options he/she considered) as soon as reasonably practicable.	Council
1.21	In the following circumstances: a) during the interim period of a Local Election and Annual Council to appoint the new Leader of the Council; or b) in absence of the Leader of the Council and in circumstances where no Deputy Leader is appointed and/or where the delegation arrangements by the Leader of the Council to Cabinet Members are not in place; or c) during the period where the Council has removed the Leader of the Council by resolution and the new Leader is to be appointed at the subsequent Council; or d) where it is not practicable to call a meeting of the Cabinet, and where the Chief Executive is of the opinion that as a matter of urgency any decision in relation to an Executive function shall be taken by him/her in the best interests of either the Council or the inhabitants of the Borough, as he/she considers necessary, following consultation, which in respect of (a)-(c) above is with any appointed Group Leaders and in respect of (d) above is with the Leader of the Council or the Deputy Leader of the Council (in the absence of the Leader of the Council). The decision will also be communicated to all Members as soon as practicable after the decision has been taken. He/she will also submit to a meeting of the Cabinet a written report of any action taken under this paragraph 1.21 (and the reasons for that action and the alternative	Cabinet

	Description	Responsibility delegated by
	options he/she considered) as soon as reasonably practicable.	
1.22	In the absence of the Chief Executive his/her powers as may be exercised by the Director of Corporate Services.	Council/Cabinet
1.23	In consultation with the Leader of the Council and Group Leaders, to determine all appointments (or decide not to make appointments) to outside organisations at any time after the general review of such appointments in accordance with the Protocol on Relations between the Leader of the Council and Political Groups. Where consensus between the Leader of the Council and the Leaders of the all the political groups is not forthcoming, the Chief Executive may refer the matter to the Council for determination.	Council
1.24	In consultation with the Overview and Scrutiny Co-ordinator, to appoint representatives to serve on a Joint Health Scrutiny Committee in accordance with legislation, guidance and/or protocols in force at the time.	Council
1.25	In line with the statutory requirements set out in sections 36 – 41 of the Counter Terrorism and Security Act 2015, ensure compliance with the Channel duty guidance 2020 (and any future updates to this guidance) including the constitution of a Channel panel for its area.	Cabinet
1.26	To make any amendments to the Polling District and Polling Station Scheme which may be required to facilitate the running of elections. (Note: this express delegation was granted by Council on 5 December 2024.)	Council (5 Dec 2024 minute 78)
2.	**Delegations to the Director of Children's Services**	
2.1	Approve all care package arrangements for children, irrespective of value.	Cabinet
3.	**Delegations to the Director of Public Health**	Statutory delegation
3.1	The holder of the post of Director of Public Health is the statutory officer for the purposes of Section 73A of the National Health Service Act 2006 and is responsible for the strategic direction and overall management and delivery of the local authority's functions relating to Public Health and without prejudice to the foregoing, shall have power, subject to compliance with the Constitution and	

Description	Responsibility delegated by
approved policies of the Council or Cabinet (as appropriate) and all legal requirements, to discharge the following functions in relation to public health matters: a) taking appropriate steps to improve the health of the people in the authority's area. Steps that may be taken include: providing information and advice; providing services or facilities designed to promote healthy living; providing services or facilities for the prevention, diagnosis or treatment of illness; providing financial incentives to encourage individuals to adopt healthier lifestyles; providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment; providing or participating in the provision of training for persons working or seeking to work in the field of health improvement; making available the services of any person or any facilities; and providing grants or loans; b) dental public health as prescribed by the Secretary of State under Section 111 of the 2006 Act; c) joint working with the prison service in relation to improving the way in which the authority's functions are exercised to secure and maintain the health of prisoners; d) the medical inspection of pupils and the weighing and measuring of children; e) research, obtaining and analysing data or other information, and obtaining advice from persons with appropriate professional expertise; f) planning for, or responding to, emergencies involving a risk to public health; g) co-operating with arrangements for assessing risks posed by violent or sexual offenders;	

Description		Responsibility delegated by
	h) any public health function of the Secretary of State (or functions exercisable in connection with those functions): • which the authority is required by regulations to exercise; or • in respect of which arrangements have been made;	
	i) any other function prescribed by the Secretary of State as the responsibility of the Director of Public Health;	
	j) the oversight of clinical governance arrangements;	
	k) making representations to the licensing authority in relation to applications for the grant, variation and review of premises licences as responsible authority for public health for the purposes of the Licensing Act 2003; and	
	l) provision of contraceptive services.	

4. Delegations to the Head of Legal Services

4.1	Institute, defend and conduct any legal proceedings and take all steps necessary to enforce judgements in accordance with any policies approved by the Council or the Cabinet.	Cabinet
4.2	To authorise employees to appear on behalf of the Council in the County Court and/or Magistrates' Court pursuant to Section 60 of the County Courts Act 1984 and Section 223 of the Local Government Act 1972.	Council/Cabinet
4.3	Where the Council or the Cabinet or an officer acting under delegated powers has made a decision to acquire or dispose of a freehold or leasehold property interest, to determine the detailed terms of acquisition/disposal. No term shall be agreed that is contrary to any term imposed by the decision maker without the consent of the decision maker or (in the case of the Cabinet, the express approval of the Leader of the Council);	Council (so far as part of the Capital Plan) – otherwise Cabinet

5. Delegations to the Divisional Director for Place Strategy

5.1	To consider and take any action under the Town and Country Planning Act 1990 in connection with tree preservation and enforcement.	Council
5.2	To consider and (if appropriate) determine (unless such determination is reserved by law or the Council's Constitution to Council or its Planning Committee) all applications and all other matters (including issuing Notices, making Orders and requesting the Head of Legal Services to issue civil or criminal proceedings) relating to: Town and Country Planning; Conservation Areas; Listed Buildings; Scheduled Ancient Monuments; The display of advertisements; Public Rights of Way; Environmental Impact Screening/Scoping; Screening Assessments and Appropriate Assessments pursuant to the Habitats Regulation; Applications for prior approval and prior notification made under the General Permitted Development Order; Amendments to planning obligations (s.106 agreements); and Collection of the Community Infrastructure Levy.	Council
5.3	Following consultation with the relevant Member, to determine applications for planning permission where an application that is materially the same has previously been refused because of a failure to execute a Section 106 Agreement and such determination would otherwise be contrary to a limitation set out in paragraph 5.4 to 5.6 below, or where an appropriate Section 106 Agreement has been executed and there has been no other material change in circumstances.	Council

Limitations to Delegated Powers to the Divisional Director for Place Strategy

5.4	At all times to have regard to the Development Plan (as defined in S.38 of the Planning and Compulsory Purchase Act 2004) for Torbay ("the Development Plan").	Council
5.5	The Divisional Director for Place Strategy shall not determine any application (or other matter) in a manner that would (in his/her opinion or the opinion of the Director of Pride in Place not be in accordance with the Development Plan and any such application (or other matter) shall be referred to the Planning Committee (or, if he/she considers it appropriate, Council).	Council
5.6	Save in the circumstances set out in paragraph 5.6.1 below, the Divisional Director for Place Strategy may not determine and must refer to the Planning Committee (or, if he/she considers it appropriate, Council) any application (or other matter) that: (a) Constitutes a "Major Development" (as defined (from time to time) by the Secretary of State) for the purposes of the Council's PS1 Return except for i. minor amendments to planning obligations made in connection with Major Development where there are no objections to the proposed variation; and ii. minor material amendments to permissions for Major Development (b) Relates to Minerals; (c) Relates to the handling, transfer or disposal of Waste or Hazardous Waste; (d) Relates to land owned, controlled or occupied by the Council (unless there are no objections or it is a minor variation to an existing planning permission); (e) The Divisional Director for Place Strategy, or any Director, Divisional Director or Head of Service has requested be referred to the Planning Committee or Council; (f) By law requires determination by Council or a Council Committee or the Secretary of State; and (g) Having consulted with the Chair or Deputy Chair of the Planning Committee, he/she considers should be referred to Members for consideration or determination in the interest of the Council or the public or for any other reason.	Council/Cabinet

5.6.1	Subject to paragraph 5.6.2 below, the limitations set out in paragraphs 5.6 (a) to (e) on the power of the Divisional Director for Place Strategy to determine planning and other applications shall not apply in circumstances where: (a) emergency legislation has the effect of prohibiting the holding of Council meetings; or (b) as a result of quarantine, whether mandatory or advisory, or illness of Members it is not possible for a quorate meeting of the Planning Committee to be held on the date scheduled in the Council's Calendar of Meetings; and the best endeavours of the Divisional Director for Place Strategy shall be used to ensure that notice of decisions made under this paragraph is sent electronically to the Chair, all Members of the Planning Committee and relevant Ward Members.	
5.6.2	In respect of major developments (as defined in paragraph 5.6(a) above), the delegations outlined in 5.6.1 above shall only apply in exceptional circumstances and consultation prior to decisions being taken shall include the Leader of the Council and Group Leaders, in addition to the Chair of the Planning Committee.	
5.6	The Divisional Director for Place Strategy shall refer to the Cabinet for determination any matters the determination of which is an Executive Function (e.g. preparation of supplementary planning guidance, designation of conservation areas, designation of areas of archaeological interest, designation of nature reserves, removal of permitted development rights through Article 4 Directions and making compulsory purchase orders).	not applicable

5.a Delegations to the Building Control Manager

5.1	To consider and determine (unless such determination is reserved by law or the Council's Constitution to Council all applications and all other matters (including issuing Notices, making Orders and requesting Legal Services to issue civil or criminal proceedings) relating to the Buildings Act 1984 and Building Regulations as appropriate.	Council

6. Delegations to the Head of Tor Bay Harbour Authority and Tor Bay Harbour Master

6.1	To serve or receive notices, make orders, authorise any action or the institution, defence or conduct of proceedings and appeals and authorise named	Council

employees to enforce specific powers in respect of Tor Bay Harbour Authority.

6.2	The following powers in this paragraph are statutory powers which cannot be exercised by any officer other than the Head of Tor bay Harbour Authority and Tor Bay Harbour Master, his/her Deputy or appointed assistants (such appointments being specifically referred to in their job description). Likewise they cannot be withdrawn by the Chief Executive or any other officer.	Statutory delegation
6.2.1	To give general directions to regulate the movement and berthing of ships and the safety of navigation.	
6.2.2	To give directions prohibiting the entry into, or requiring the removal from, the Harbour of any dangerous vessels.	
6.2.3	To prohibit the entry into the Harbour, and to regulate the movement, of any vessel carrying dangerous substances and to control similarly the entry onto the Harbour estate of dangerous substances brought from inland.	
6.2.4	To detain a vessel, if he/she has reason to believe that it has committed an offence by discharging oil, or a mixture containing oil, into the waters of the Harbour.	
6.2.5	Only in relation to property forming part of the Harbour Estate and always having first obtained the approval of a Fellow or Member of the Royal Institution of Chartered Surveyors (RICS) as to the value and terms of such disposal:-	Cabinet

(a) to grant or enter into the terms of leases, sub leases, or licences where the consideration does not exceed £50,000 per annum on any single transaction (or series of linked transactions);

(b) to grant or enter into easements, licences, agreements, restrictive covenants or other rights or obligations where the consideration does not exceed £50,000 on any single transaction (or series of linked transactions);

(c) to effect freehold disposals of land not required for operational purposes up to £50,000 in value;

(d) to renew leases (regardless of the level of rent payable), licences and undertake a review of rents and licence fees when necessary and to agree surrenders, sub-letting and approve assignments; and

(e) to approve variation to (including the release of)

restrictive and other covenants.

6.2.6	To regulate the time and manner of a ship's entry into, departure from and movement within the Harbour waters and related purposes.	Council
6.3	To vary (by addition or waiver (in full or as to part)) the approved Schedule of Harbour Charges in such manner as the Head of Tor bay Harbour Authority and Tor Bay Harbour Master shall consider reasonable; including for example (without restricting the generality of this power) where he/she considers: (i) the variation to be in the best interest of the Harbour Authority and/or local people; (ii) the variation would fairly reflect actual or part-year usage; (iii) that it would be appropriate where a vessel owner/operator has made use of a facility as a result of what the Head of Tor bay Harbour Authority and Tor Bay Harbour Master considers to be extreme or unusual weather conditions, an accident at sea, or other emergency; and (iv) it appropriate to levy a charge above or in addition to those matters contained within the approved Schedule of Charges for anything done or provided by (or on behalf of) the Harbour Authority in accordance with the Harbours Act 1964 and/or Section 24 of the Tor Bay Harbour Act 1970 or any amendments or re-enactments of those Acts. PROVIDED THAT the Head of Tor bay Harbour Authority and Tor Bay Harbour Master shall maintain a proper written record of all variations approved under this paragraph and shall, at least twice a year, report to the Harbour Committee the total value of the additional charges levied and the total value of the charges waived under this paragraph.	Council (as part of the budget)

7. Delegations to the Chief Finance Officer (as Section151 Officer)

7.1	In accordance with the Council's Standing Orders and Financial Regulations: (a) to take any decisions (including any Key Decisions) and to exercise all legal powers relevant to the Council's borrowing, investments, and financial management;	Cabinet

(b) to approve the re-phasing of expenditure between years on approved schemes, provided that the impact does not exceed the overall level of the approved programme and the level of resources estimated to be available;

(c) to authorise the opening and closing of any such bank accounts, purchasing cards etc. as may be considered necessary in the Council's interest;

(d) in respect of National Non Domestic Rates, Council Tax including Council Tax Support Scheme, and other income and debtors, to exercise all the powers of the Council (including the institution of legal proceedings and all steps necessary to enforce judgements) in accordance with any policies approved by the Council or the Cabinet;

(e) in respect of any sums due to the Council, to approve the writing off of sums that he/she considers to be irrevocable (or uneconomic to recover). If the amount to be written off exceeds £1,000 the Chief Finance Officer shall first consult with the relevant Cabinet Member with responsibility for finance;

(f) to submit bids and accept any grant offers, including the terms and conditions attached to such offers subject to the grant offer and terms and conditions being in accordance with the Council's policies and objectives, and make any resulting budget virements;

(g) in consultation with the Chief Executive to approve any use of contingency budgets, carry forwards (positive or negative) that the Chief Finance Officer deems necessary;

(h) in consultation with the Chief Executive to approve the use of Earmarked reserves in accordance with Financial Regulations;

(i) in consultation with the Chief Executive, the Leader of the Council and Cabinet Lead Member for Finance, to make adjustments to and introduce new fees and charges in year if it has no adverse impact upon the revenue or capital budget;

(j) to make any changes to the budgets for technical reasons;

(k) the approval of the estimated distribution on the Collection Fund for both Council Tax and Non Domestic Rates; and

(l) approval of the Council's estimate of Business Rate Income as required to be submitted to central government.

7.2	In consultation with the relevant Member, to determine all applications for grants or concessions from the Council up to the value of £25,000 (to any one person or organisation whether or not extending over more than one financial year) and to impose such conditions on any approved grant as he/she shall consider appropriate. In exercising this power the Chief Finance Officer shall have regard to all relevant matters including the following: (a) the extent to which the grant requested would facilitate a contribution towards the Council's priorities; (b) the extent to which the grant requested would be likely to assist the grantee to obtain additional funding from third parties; (c) whether alternative sources of funding are available to the grantee; (d) value for money; (e) the extent to which the grant is likely to enable the grantee to apply the principle of "invest to save"; (f) the likely medium and long-term implications for the Council's Revenue Budget; and (g) the extent to which the grantee is able to demonstrate that it has in place (or is able to put in place) effective auditing arrangements to monitor and control the expenditure of the grant monies.	Cabinet
7.3	Changes to rent terms arising from changes in market rents linked to economic conditions or rent breaks and renewals shall only be approved by the Chief Finance Officer (or his/her designated deputies) in consultation with the Deputy Leader of the Council and Cabinet Member for Finance.	Cabinet
7.4	To make adjustments to the Exceptional Hardship Policy and Fund and the Vulnerable Policy in consultation with the Leader of the Council and Cabinet Lead for Finance.	Council/Cabinet

7.5	To approve increases to the approved Capital Budget which are in respect of the drawdown of specific grant(s), in consultation with the Cabinet Member for Housing and Finance. (Note: This delegation only applies to grant funding where there is no direct financial impact or future liability to the Council.)	Council (5 Dec 2024 minute 71)
	Limitations to Delegated Powers to the Chief Finance Officer	
7.6	That the provisions outlined above exclude decisions to make loans or provide guarantees to external organisations and that these require approval by Full Council. However loans of less than £50,000 to be approved by the Chief Finance Officer, in consultation with the Chief Executive and the Leader of the Council.	Council/Cabinet
8.	**Delegations to the Head of Governance Support**	Council/Cabinet
8.1	To authorise additional training and development that is not included within the Members' Development Programme in accordance with the Local Protocol on relations between the Leader of the Council and Political Groups.	Council
8.2	The appointment of Political Group Assistants where budget is allocated for such posts.	Council
8.3	The taking of disciplinary action (including dismissal) in relation to any Group Assistant (in consultation with the relevant Group Leader).	Council/Cabinet
8.4	To approve Members' and Co-opted Members' travel and subsistence allowances that technically fall outside the scheme where he/she is satisfied that the expenses incurred are essential to the proper conduct of Council related business.	Council
9.	**Delegations to the Monitoring Officer**	Council/Cabinet
9.1	To make changes to the Council's constitution required for technical or legal reasons.	Council/Cabinet
10.	**Delegations to the Head of Human Resources**	
10.1	To negotiate and reach agreement on behalf of the Council on policies and procedures concerning employees.	Cabinet

10.2		To obtain the necessary statistical information to enable the Council to monitor the composition of its workforce in accordance with its equal opportunity and other policies and good practice.	Cabinet

11. Delegations to the Director of Finance

Property Management, Acquisition and Disposal:

11.1	(a)	To grant or enter into leases, easements, licences, agreements, restrictive covenants or other rights or obligations where the consideration does not exceed £50,000 per annum on any single transaction (or series of linked transactions);	Cabinet
	(b)	To grant leases for up to 40 years to sports clubs on acceptable terms which each case being considered on its merits;	
	(c)	To renew leases (regardless of the level of rent payable), licences and undertake a review of rents and licence fees when necessary and to agree surrenders, sub-letting and approve assignments;	
	(d)	To approve variations to (including the release of) restrictive and other covenants;	
	(e)	To approve terms for the appropriation of land previously authorised by the Cabinet or the Council; and	
	(f)	To effect freehold disposals of land not required for operational purposes up to £50,000 in value.	
11.2		To take all operational decisions in relation to the management of the Council's Investment and Regeneration Fund and Economic Growth Fund Portfolios.	Cabinet/Council

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Proper Officers and Statutory Appointments

1. Legislation requires local authorities to appoint certain officers with statutory and proper officer responsibilities. These appointments and the officer to whom the council has allocated responsibility are listed below.

2. Where in any legislation reference is made to a Proper Officer of the Council and no officer has been appointed by the Council to act for that purpose, then the Chief Executive will be deemed to be the Proper Officer.

3. The Proper Officers designated below and any other officer of the Council having specific duties under his or her appointment to the service of the Council shall be an authorised officer for the purpose of any specific reference to an authorised officer in an Act or Regulation relating to such duties.

4. In the foregoing designations of Proper Officers and in any case where an officer is appointed or authorised, he or she may delegate such authorisations to such officer as he or she may determine and may make such arrangements for the carrying out of functions in the event of his or her absence or otherwise being unable to act by any other officer of the Council as he or she considers appropriate, subject to such arrangements being made in written form indicating the officers in power to exercise the functions and the functions involved.

5. In the event of the Chief Executive being absent or otherwise unable to act the Director of Pride in Place has been appointed Proper Officer.

6. In the event of the Chief Finance Officer being absent or otherwise unable to act, his/her nominated deputy has been appointed Proper Officer in accordance with Section 114(6) of the Local Government Finance Act 1988.

7. Any reference in this document to an enactment is to be taken as including a reference to any enactment for the time being amending or replacing it.

Statutory Officers

Legislation	Section	Statutory Officer	Allocated To
Local Authority Social Services Act 1970	S6	Director of Adult Social Services	Director of Adults and Community Services, for purposes of the Council's audit of adult social services functions
Local Government Act 1972	S151	Officer responsible for financial administration	Chief Finance Officer
Representation of the People Act 1983	S8	Registration Officer (local government elections)	Chief Executive

Legislation	Section	Statutory Officer	Allocated To
Representation of the People Act 1983	S28	Acting Returning Officer (Parliamentary elections)	Chief Executive
Representation of the People Act 1983	S35	Returning Officer (local government elections)	Chief Executive
Local Government and Housing Act 1989	S4	Head of Paid Service	Chief Executive
Local Government and Housing Act 1989	S5	Monitoring Officer	Head of Legal Services
Education Act 1996	S532	Chief Education Officer	Director of Children's Services
Local Government Act 2000	S21ZA	Scrutiny Officer	Democratic Services Team Leader
Children's Act 2004	S18	Director of Children's Services	Director of Children's Services
National Health Service Act 2006	S73A	Director of Public Health	Director of Public Health, appointed by the authority acting jointly with the Secretary of State

Proper Officers

Legislation	Section	Provision	Proper Officer
Public Health Act 1936	S84 and S85	Cleansing of filthy or verminous articles, persons or clothing	Consultant in Communicable Disease Control (or equivalent) for Health Protection Agency, as authorised by the Divisional Director for Community and Customer Services
The Health Protection (Notification) Regulations 2010	Regs 2, 3, 6	Receipt and disclosure of notification of suspected notifiable disease, infection or contamination in patients and dead persons	Consultant in Health Protection in the South West Region of the United Kingdom Health Security Agency (UKHSA) as authorised by the Director of Public Health
Marriage Act 1949	S57(4)	Reimbursing superintendent registrars the fees paid to incumbents and authorised persons for quarterly certified copies of marriage certificates	Director of Corporate Services
National Assistance Act 1948 as amended by the National Assistance (Amendment) Act 1951	S47	The removal of persons in need of care and attention to suitable premises	Consultant in Communicable Disease Control (or equivalent) for Health Protection Agency, as authorised by the Divisional Director for Community and Customer Services
Registration Service Act 1953	S6(1)	Appointment of registration officers	Director of Corporate Services
Registration Service Act 1953	S6(3)	Payment of registration officers and receipt of fees	Director of Corporate Services
Registration Service Act 1953	S14(1)	Preparation and submission of a local registration scheme	Director of Corporate Services

Legislation	Section	Provision	Proper Officer
Milk and Dairies (General) Regulations 1959	Part VII (Regs 18 to 20)	Pasteurisation Orders	Consultant in Communicable Disease Control (or equivalent) for Health Protection Agency, as authorised by the Divisional Director for Community and Customer Services
Public Health Act 1961	S37	Disinfestation of verminous articles offered for sale	Consultant in Communicable Disease Control (or equivalent) for Health Protection Agency, as authorised by the Divisional Director for Community and Customer Services
Agriculture Act 1970	S67	Agricultural Analyst	Consultant in Communicable Disease Control (or equivalent) for Health Protection Agency, as authorised by the Divisional Director for Community and Customer Services
Local Authority Social Services Act 1970 Children's Act 1989 NHS and Community Care Act 1990.	S7(B) S26 S50	Complaints Officer	Director of Children's Services
General Data Protection Regulation (GDPR)	S4	Data Protection Officer	Head of Information Governance
Digital Economy Act 2017	Part 6	To pay a data protection fee to the Information Commissioner's Office	Head of Information Governance
Protection of Freedoms Act 2012	S33(5)	SPOC (Single Point of Contact for CCTV)	Environmental Health Manager (Commercial)

Legislation	Section	Provision	Proper Officer
Protection of Freedoms Act 2012	S33	SRO (Senior Responsible Officer for CCTV)	Head of Information Governance
Local Government Act 1972	S83(1) – (3)	Witness and receipt of acceptance of office on form prescribed by rules made under Section 42 of the Act (office of councillor and Chair or Vice-Chair of Council)	Chief Executive
Local Government Act 1972	S84	Receipt of declaration of resignation of office	Head of Governance Support
Local Government Act 1972	S88(2)	Conveying a meeting of the Council to fill a casual vacancy (in the case of a Chair of a Committee)	Chief Executive
Local Government Act 1972	S89(1) (b)	Receipt of notice of casual vacancy from two local government electors	Chief Executive
Local Government Act 1972	S99 and Schedule 12 Para 4(2)(b)	Signature of Summonses to Council Meetings	Chief Executive
Local Government Act 1972	S115(2)	Receipt of money due from officers	Chief Finance Officer
Local Government Act 1972	S146(1)(a) &(b)	Declarations and Certificates with regard to transfer of securities on the change of name of the authority	Chief Finance Officer
Local Government Act 1972	S191(2)	Receipt of an application under Section 1 of the Ordnance Survey Act 1841	Divisional Director for Community and Customer Services
Local Government Act 1972	S204(3)	Receipt of notice of an application for a justices' licence under Schedule 2 of the Licensing Act 1964	Divisional Director for Community and Customer Services
Local Government Act 1972	S210(6) & (7)	Charity functions of holders of office with existing authorities transferred to holders of equivalent offices with new authorities	Head of Legal Services

Legislation	Section	Provision	Proper Officer
Local Government Act 1972	S225(1)	Deposit of documents	Head of Legal Services
Local Government Act 1972	S229(5)	Certification of photographic copies of documents	Head of Legal Services
Local Government Act 1972	S234(1) & (2)	Authentication of documents	Head of Legal Services
Local Government Act 1972	S236(10)	To send copies of Bylaws to the County Council	Head of Legal Services
Local Government Act 1972	S238	Certification of Bylaws	Head of Legal Services
Local Government Act 1972	S248(2)	Keeping of the roll of Freemen	Head of Governance Support
Local Government Act 1972	Schedule 3 Para 6(2)	Custody of first Declarations of Acceptance of Office	Head of Governance Support
Local Government Act 1972	Schedule 12 Para 4(3)	Receipt of notices of addresses to which summonses to meetings are to be sent	Head of Governance Support
Local Government Act 1972	Schedule 14 Para 25(7)	Certification of resolutions	Head of Governance Support
Local Government Act 1974	S30	Reports on Investigations by the Local Director for Administration	Chief Executive
Land Charges Act 1975	S19	The officer to act as Local Registrar as defined in Section 3 of the Land Charges Act 1975	Divisional Director for Place Strategy
Safety of Sports Grounds Act 1975		Technical Chair of the Safety Advisory Group	Divisional Director for Community and Customer Services

Legislation	Section	Provision	Proper Officer
Ancient Monuments and Archaeological Areas Act 1979	S1A	Receipt of information on the inclusion, amendment or exclusion, or a copy of any entry or amended entry in the Schedule of Ancient Monuments, relating to any Monument in the area of the Authority	Divisional Director for Community and Customer Services
Representation of the People Act 1983	S52(2)	Deputy to the Registration Officer	Director of Corporate Services Head of Governance Support Electoral Services Team Leader
Representation of the People Act 1983	S82	Witnessing of signatures on candidates and agents declarations as to expenses at local elections	Chief Executive
Public Health (Control of Disease) Act 1984	S37	Power to a Justice of the Peace to order or removal to hospital of a person with a notifiable disease	Divisional Director for Community and Customer Services
Public Health (Control of Disease) Act 1984	S38	Power to a Justice of the Peace to order the detention of a person in hospital	Divisional Director for Community and Customer Services
Public Health (Control of Disease) Act 1984	S41	Power to remove to hospital an inmate of a common lodging house	Divisional Director for Community and Customer Services
Public Health (Control of Disease) Act 1984	S46	Disposal of dead bodies	Divisional Director for Community and Customer Services
Public Health (Control of Disease) Act 1984	S61	Power to enter premises	Divisional Director for Community and Customer Services

Legislation	Section	Provision	Proper Officer
Public Health (Control of Disease) Act 1984	S11, 18, 20, 21, 22, 24, 29 31, 35-38, 40-43 & 48	The control of notifiable diseases and food and poisoning	Divisional Director for Community and Customer Services – authorising named deputies for the Consultant in Communicable Disease Control for the Health Protection Agency
Building Act 1984	Various	All purposes for proper officer in relation to Building Control matters	Building Control Manager
Local Government (Access to Information) Act 1985 (as amended)	S100B(2)	Designation of Reports “Not for Publication”	Chief Executive, Directors, Divisional Directors and Heads of Service
Local Government (Access to Information) Act 1985	S100B(7) (c)	Supply of papers to the press	Head of Governance Support
Local Government (Access to Information) Act 1985	S100C(2)	Summaries of Minutes	Head of Governance Support
Local Government (Access to Information) Act 1985 (as amended)	S100D(1) (a)	Compilation of lists of background papers	Chief Executive, Directors, Divisional Directors and Heads of Service
Local Government (Access to Information) Act 1985 (as amended)	S100D(5) (a)	Identification of background papers	Chief Executive, Directors, Divisional Directors and Heads of Service
Local Government (Access to Information) Act 1985	S100F(2)	Decisions affecting members’ rights to receive papers	Monitoring Officer
Registration of Marriages Regulations 1986			Director of Corporate Services

Legislation	Section	Provision	Proper Officer
Registration of Births and Deaths Regulations 1987			Director of Corporate Services
Local Registration Scheme	Article 5(1)(b)	Provision of assistance to registration officers	Director of Corporate Services
Local Registration Scheme	Article 6	Provision, equipping and maintenance of registration offices	Director of Corporate Services
Local Government Finance Act 1988	S114(1)	Preparation of a report in the case of unlawful expenditure	Chief Finance Officer
Local Government Finance Act 1988	S116 (3)	Notification to the Auditor of the date, time and place of any meeting of the Council to consider a report under Section 114(1)	Chief Finance Officer
Local Government Finance Act 1988	S139A	Provision of information to the Secretary of State in relation to the exercise of his powers under this Act as and when required	Chief Executive
Local Government and Housing Act 1989	S2(4)	Maintenance of the list of politically restricted posts	Head of Human Resources
Local Government and Housing Act 1989	S3(3)	Certification that a post is or is not politically restricted	Head of Human Resources
Local Government and Housing Act 1989	S15 – 17	The officer to receive notices relating to the membership of political groups	Head of Governance Support
Local Government and Housing Act 1989	S37(insert-ing S137A of the LGA 1972)	The deposit of a statement or report or accounts from a voluntary body in receipt of financial assistance above the relevant level	Chief Finance Officer
Listed Buildings Act 1990		Receipt on deposit of lists of protected buildings	Divisional Director for Place Strategy

Legislation	Section	Provision	Proper Officer
Food Safety Act 1990	S27	Public Analyst	Divisional Director for Community and Customer Services – authorising named deputies for the Consultant in Communicable Disease Control for the Health Protection Agency
Environmental Protection Act 1990	S149	Discharging the functions imposed or conferred for dealing with stray dogs found in the area of the Authority	Divisional Director for Community and Customer Services
Local Government (Committees and Political Groups) Regulations 1990 (as amended).		All purposes connected with the Regulations	Head of Governance Support
Local Authority (Members' Allowances) Regulations 1991	Regulation 14	To receive written notice from a member electing to forego entitlement to allowances	Head of Governance Support
Local Government Act 2000	S81	Maintaining the register of members' financial and other interests	Head of Governance Support
Local Government Act 2000		Responsible for the referral of Executive proposals to the Council and for other administrative processes arising from the Council's constitutional arrangements.	Head of Governance Support
Local Government Act 2000		To make payments of relevant allowances in accordance with the Council's Members' Allowances Scheme	Head of Governance Support

Legislation	Section	Provision	Proper Officer
The Countryside and Rights of Way of Act 2000 (The Access to the Countryside (Maps in Draft Form) (England) Regulations 2001)	Regs 4, 9, 10 and 11 SI 2001/ 3301	The deposit and display of draft maps	Divisional Director for Place Strategy
Local Authorities (Standing Orders) (England) Regulations 2001		Notifying members of the Executive of the proposed appointment or dismissal of a Chief Officer or Deputy Chief Officer	Chief Executive
Local Authorities (Referendum) (Petitions and Directions) (England) Regulations 2001		Publishing the number that is equal to 5% of the number of Local Government electors in the area. Notifying the Secretary of State and petition organiser after receipt of a petition, including whether it is held to be valid or not valid. Taking the necessary procedural steps on receipt of the petition, including amalgamating petitions.	Chief Executive
Mental Health Act 1983		To appoint officers to act as Approved Mental Health Professionals.	Director of Adult Services
Mental Health Act 1983		To accept a guardianship application and to exercise the powers of guardianship.	Director of Adult Services
Mental Health Act 1983 and Mental Health Act 2007		To exercise the functions of the Nearest Relative in all matters in which it is appropriate for an Officer of the Council so to act.	Director of Adult Services
Public Health (Ships Act) 1979 (as amended 2007)	All	To enforce and execute any of the Public Health (Ships) Regulations 1979	Director of Public Health

Legislation	Section	Provision	Proper Officer
Working Together to Safeguard Children 2023	All	Lead Safeguarding Partner (LSP) to be clearly named in published arrangements and are accountable for the effectiveness and outcome of multi-agency safeguarding arrangements in their area. They shall appoint a Delegated Safeguarding Partner (DSP) who shall also be named in the arrangements.	Chief Executive
Working Together to Safeguard Children 2023	All	To be the named appointed Delegated Safeguarding Partner (DSP). To take multi-agency decisions on behalf of the LSP and to hold their sectors to account.	Director of Children's Services

Standing Orders – Council Meetings

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A1. Annual Meeting of the Council
(This Standing Order may not be suspended)

A1.1 In a year when there is an all-Council election, the annual meeting will take place between 8 and 21 days after the retirement of the outgoing councillors. In any other year, the annual meeting will take place in March, April or May. (Schedule 12 of the Local Government Act 1972)

A1.2 At the Annual Meeting, the Council will:

(i) elect a person to preside if the Civic Mayor is not present. (Note 1: Members of the Cabinet are not permitted to be the Civic Mayor or Deputy Civic Mayor; and Note 2 this will normally be a Member from the Administration.);

(ii) receive apologies for absence;

(iii) elect the Civic Mayor for the ensuing Municipal Year. Consent shall be given by the individual(s) nominated for this position prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting. (Note 1: Members of the Cabinet are not permitted to be the Civic Mayor; and Note 2 the Civic Mayor will normally be a Member from the Administration.);

(iv) elect the Deputy Civic Mayor for the ensuing Municipal Year. Consent shall be given by the individual(s) nominated for this position prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting. (Note 1: Members of the Cabinet are not permitted to be the Deputy Civic Mayor; and Note 2 the Deputy Civic Mayor will normally be a Member from the Administration.);

(v) receive any declarations of interest from the members and officers;

(vi) approve the minutes of the last meeting;

(vii) receive any announcements from the Leader of the Council (excluding the year of a whole Council election), Civic Mayor and/or the Chief Executive;

(viii) in the year of a whole Council election, to elect the Leader of the Council for a four year term and until the Annual Council meeting following the next whole Council election. Consent shall be given by the individual(s) nominated for this position prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting;

(ix) appoint the Overview and Scrutiny Co-ordinator and (if any) up to four Overview and Scrutiny Lead Members. (Note 1: Cabinet Members shall not be appointed as the Overview and Scrutiny Co-ordinator or Scrutiny Lead Members. Note 2: the Overview and Scrutiny Co-ordinator will normally be a Member from the Opposition and where political balance allows). Consent shall be given by individuals nominated for these positions prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting;

(x) appoint at least one Overview and Scrutiny Committee, a Health and Wellbeing Board, a Standards Committee and such other committees and working parties as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are executive functions (as set out in Part 3 of this Constitution). In appointing those committees the Council will:

(a) determine which committees to establish for the Municipal Year;

(b) determine the size and terms of reference of those committees;

(c) determine the allocation of seats in accordance with the political balance rules;

(d) request nomination of members to serve on each committee and appoint to these committees in accordance with Standing Order A1.4) below; and

(e) elect the Chair and appoint the Vice-Chair of those bodies (with the exception of Committees and Sub-Committees which meet on ad-hoc basis and require the election of the Chair and appointment of Vice-Chair at each meeting or in the case of an in year vacancy, such appointment shall be made at the next available Council meeting). Consent shall be given by individuals nominated for these positions prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting. (Note 1: normally the Chair of Overview & Scrutiny Bodies and Audit Committee shall be an Opposition Member, where political balance allows; and, Note 2: normally where the Administration hold Committee Chair positions, the Opposition will hold the Vice-Chair positions and vice versa, where political balance allows.);

(xi) approve a programme of ordinary meetings of the Council for the 4 year term in the year of a whole Council election;

(xii) be informed by the Leader of the Council about the composition of the Cabinet and the names of councillors he/she has chosen to be members of the Cabinet;

(xiii) to receive from the Leader of the Council a record of delegation of executive function in accordance with Standing Order C2;

(xiv) to answer any question under Standing Order A12, unless it is in the year of a whole Council election whereby no questions shall be permitted; and

(xv) consider any business set out in the notice convening the meeting.

A1.3 In the year of a whole Council election, to determine appointments to outside organisations.

A1.4 The members to serve on each committee, sub-committee, working party and any other body (including outside organisations) may be nominated by the Group Leaders by notice in writing to the Head of Governance Support not later than the

day before the Annual Meeting (including by e-mail if verified by the Head of Governance Support) otherwise they must be nominated by the Group Leaders at the Annual Meeting. Once appointed, Group Leaders will notify any changes to appointments in writing to the Head of Governance Support. Members not affiliated to any political group may indicate their preference in relation to places on committees, sub-committee, working parties and other bodies in writing not later than the day before the Annual meeting (including by e-mail if verified by the Head of Governance Support).

A1.5 The Civic Mayor shall not be a member of any committee, sub-committee or working party.

A1.6 The Annual Meeting of the Council will not receive petitions and questions from the public.

A2. Ordinary Meetings

(A2.2 (ii) to (iv) and (xiii) to apply to Committees and Overview and Scrutiny)
(This Standing Order may not be suspended)

A2.1 Ordinary meetings of the Council and its committees will take place in accordance with the 4 year programme decided at the Council's Annual Meeting following the all Council election. The Chief Executive in consultation with the Civic Mayor may amend that programme during each year. In relation to committees the relevant Director, Divisional Director or Head of Service in consultation with the Chair of that committee may amend that committee's programme during each year.

A2.2 Every ordinary meeting of the Council shall commence with the following items. These items must not be displaced elsewhere in the agenda:

(i) to elect a person to preside if both the Civic Mayor and Deputy Civic Mayor are not present. (Note 1 Members of the Cabinet are not permitted to be the Civic Mayor or Deputy Civic Mayor; and Note 2 this will normally be a Member from the Administration.);

(ii) to deal with any business required by statute to be dealt with before any other business; and

(iii) to approve as a correct record the minutes of the last meeting of the Council;

The remaining order of business for the meeting shall be determined by the Civic Mayor and he/she will place those items with significant public interest at the beginning of the meeting. The business of ordinary meetings of the Council shall include:

(iv) to receive any declarations of interest from members and officers;

(v) to receive any communications or announcements from the Leader of the Council, the Civic Mayor, the Overview and Scrutiny Co-ordinator or Chief Executive;

(vi) to receive petitions from the public in accordance with Standing Order A23;

(vii) to receive questions from the public in relation to matters which, in the opinion of the person presiding at the meeting, are relevant to the business of the Council and in accordance with Standing Order A24**;**

(viii) to deal with any business from the last meeting of the Council that was on the agenda, but was not dealt with at the last meeting;

(ix) to answer any question under Standing Order A12;

(x) to consider motions in accordance with Standing Order A14;

(xi) to receive reports from the Cabinet, the Council's committees (including Overview and Scrutiny Bodies) and officers including proposals from the Cabinet in relation to the Council's budget and policy framework and receive questions and answers on any of those reports;

(xii) to receive reports on the business of joint arrangements and external organisations; and

(xiii) to consider any other business specified in the summons to the meeting.

A3. Extraordinary Meetings (To apply to Committees and Overview and Scrutiny)
(This Standing Order may not be suspended)
(Paragraph 3 of Part 1, Schedule 12 of the Local Government Act 1972)

A3.1 Those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:

(i) the Council by resolution;

(ii) the Civic Mayor;

(iii) the Monitoring Officer; and

(iv) any five Members of the Council if they have signed a requisition presented to the Civic Mayor and he/she has refused to call a meeting or has failed to call a meeting within seven days of the presentation of the requisition. (Members exercising their rights under this paragraph are to give notice in writing (including by e-mail if verified by the Head of Governance Support) to the Head of Governance Support who will then call the meeting in accordance with the Standing Orders in relation to Access to Information.)

A3.2 An extraordinary meeting shall conduct no business other than that for the purpose of which it was called.

A4. Time, Place and Arrangement of Meetings (To apply to Committees, Cabinet and Overview and Scrutiny)
(This Standing Order may not be suspended)

A4.1 The time and place of meetings will be determined by the Chief Executive, in consultation with the Civic Mayor, and notified in the summons.

A4.2 Seating arrangements at meetings of the Council shall be determined by the Civic Mayor in consultation with the Leader of the Council and Group Leaders.

A5. Notice of and Summons to Meetings (To apply to Committees, Cabinet and Overview and Scrutiny)
(This Standing Order may not be suspended)

A5.1 The Chief Executive will give notice to the public of the time and place of any meeting in accordance with the Standing Orders in relation to Access to Information.

A5.2 The Chief Executive will send by electronic means, or in paper form where a member has requested, a summons signed by him/her to every member of the Council.

A5.3 The summons will give the date, time and place of the meeting, specify the business to be transacted and will be accompanied by such reports as are available. However, non-receipt of a summons by any member shall not affect the validity of the meeting.

A6. Opening of Meeting

A6.1 The proceedings of every Council meeting may be preceded by such an address as the Civic Mayor may determine.

A7. Urgent Items of Business
(This Standing Order may not be suspended)
(Paragraph 4(5) of Part 1, Schedule 12 of the Local Government Act 1972)

A7.1 Urgent items of business shall not be dealt with at ordinary or extraordinary meetings of the Council unless notice of the item in question has been included in the summons sent to members under Standing Order A5.2.

A8. Chair of Meeting
(This Standing Order may not be suspended)

A8.1 At Meetings of the Council, the Civic Mayor, if present, shall preside and, in his/her absence, the Deputy Civic Mayor, shall preside. In the absence of both the Civic Mayor and Deputy Civic Mayor the Council shall elect a Chair for that meeting, who will normally be a Member from the Administration, or the meeting shall be adjourned.

A8.2 The person presiding at any Council, committee or sub-committee meeting may exercise any power or duty of the Civic Mayor. **(To apply to Committees and Overview and Scrutiny)**

A9. Election of Civic Mayor and Deputy Civic Mayor
(This Standing Order may not be suspended)

A9.1 The selection of the Civic Mayor Elect and the Deputy Civic Mayor Elect of the Council shall take place at the final ordinary Council meeting of each Municipal Year at the latest, following the rules of debate set out in Standing Order A15 (Note the Civic Mayor Elect and the Deputy Civic Mayor Elect will normally be a Member from the Administration). The Council may resolve not to select a Civic Mayor Elect and/or Deputy Mayor Elect in the year of the all-Council elections. In the event that the Council fails to pass a motion to select the Civic Mayor Elect and/or Deputy Civic Mayor Elect the matter must be determined at the following

Annual Council meeting. Consent shall be given by the individuals nominated for Civic Mayor Elect and Deputy Civic Mayor Elect prior to the meeting where possible or prior to any vote being taken if consent has not been obtained in advance of the meeting

A10. Quorum
(This Standing Order may not be suspended)

A10.1 The quorum at a meeting of the Council shall one quarter of the whole number of members which equates to nine members, including the person presiding at the meeting.
(Paragraph 6 of Part 1, Schedule 12 of the Local Government Act 1972)

A10.2 During any meeting if the Civic Mayor counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Civic Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

A11. Duration of Meeting (To apply to Committees, Cabinet and Overview and Scrutiny)

A11.1 Subject to Standing Order A11.2, unless the majority of members present vote for the meeting to continue, any meeting or adjourned meeting that has lasted for four hours will adjourn immediately. Remaining business will be considered at a time and date to be fixed by the Civic Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

A11.2 Prior to the adjournment of any meeting pursuant to Standing Order A11.1, the Civic Mayor shall invite the Chief Executive, Monitoring Officer and Section 151 Officer (Chief Finance Officer) to indicate whether there is any other business that they believe must be transacted at that meeting. If any such officer indicates that there is any other business that must be transacted at the meeting before it is adjourned, such business must be transacted before any adjournment regardless of the outcome of the vote referred to at paragraph A11.1.

A12. Questions by Members

A12.1 **Notices of questions at Council**

Subject to Standing Order A12.3, a member of the Council may ask:

(i) the Civic Mayor;

(ii) the Leader of the Council;

(iii) a member of the Cabinet;

(iv) the Chair of any committee (including the Overview and Scrutiny Board); or

(v) a Council representative on an outside organisation

a question on any matter in relation to which the Council has powers or duties or which affects the Borough of Torbay and is relevant to the area or areas of responsibility of the person to whom the question has been asked.

A12.2 **Notice of questions**

A member may only submit three questions for consideration at each Council Meeting and may only do so if either:

(i) he/she has given notice in writing (including by e-mail if verified by the Head of Governance Support) of the question to the Head of Governance Support by 4.00 p.m. ten clear working days before the next Council meeting and that question has been accepted; or

(ii) the Civic Mayor permits the question to be put because of exceptional circumstances and the questioner has given a copy of his/her question to the Head of Governance Support by 4.00 p.m. on the working day prior to the meeting or (if later) as soon as reasonably practicable.

A12.3 The Chief Executive, in consultation with the Civic Mayor, may decline to accept any question if it is in his/her opinion:

(i) factually inaccurate; or

(ii) it is identical or materially similar to a question which has received a response within the 12 months preceding the Council meeting; or

(iii) it is illegal, defamatory, scurrilous, irrelevant or otherwise objectionable; or

(iv) to respond to the question would require a disproportionate amount of officer time (having regard to any possible benefits such work would deliver) and the question is not of such nature that would require a response if made pursuant to the Freedom of Information Act 2000.

Where a member's question is declined by the Chief Executive, the Chief Executive will provide the reason(s) for this and where possible assist the member to amend the declined question so that it is acceptable.

Following approval of the question, the Head of Governance Support will send a copy of the question(s) to the member to whom it has been put and include the question(s) with the Council agenda.

A12.4 The Chief Executive (in consultation with the Civic Mayor and group leaders) may defer any question from a Member to a subsequent meeting of the Council where in his/her opinion, having regard to the complexity of the questions and amount of officer time reasonably likely to be required to be spent in researching the matter, it is reasonable to do so.

At the Meeting

A12.5 At the Council meeting each member will present their first question in turn, when all the first questions have been dealt with the second and third questions may be asked in turn.

A12.6 The time for members' questions will be limited to a total of 30 minutes. If a member has already commenced a response, the member who asked the question shall have the right to ask his/her supplementary question and receive a response.

A12.7 Any questions not dealt with after 30 minutes will be deemed withdrawn, the member may resubmit the question as one of their three question to the next Council meeting provided the question is submitted in accordance with Standing Orders A12.1, A12.2 and A12.3.

A12.8 A member submitting a question under this Standing Order shall attend the Council meeting to present their question. In the absence of the questioner, another member may present the question.

A12.9 Subject to Standing Order A12.11, questions submitted under this Standing Order shall be put and answered without discussion.

A12.10 **Responses**

An answer to a question will take the form of:

(i) a written answer and will be published at least one hour prior to the meeting; or

(ii) where the desired information is in a publication of the Council or other published work, a reference to that publication.

An answer to a supplementary question will take the form of a:

(i) a direct oral answer; or

(ii) where the desired information is in a publication of the Council or other published work, a reference to that publication.

Where the member to whom the question was asked is either absent and no other member is able to respond, the question will be referred to the next meeting where the member is present. If the member asking the questions wishes a response prior to the next meeting, they may request a written answer from the member concerned. If the member asking the question is absent, the member must seek agreement from the Civic Mayor prior to the Council meeting for another member to present the question on their behalf or the question will withdrawn.

A12.11 **Supplementary Question**

A member asking a question under this Standing Order may ask one brief supplementary question, with the consent of the Civic Mayor or the person presiding (which shall not be reasonably refused), without notice to the member to whom the question was asked. The supplementary question must arise directly out of the original question or the reply and must not be a statement. A member asking a supplementary question shall have a maximum of one minute to put his/her question at the meeting. The member responding to a supplementary question shall have a maximum of three minutes to put his/her answer to the question.

A13. Notices of Motion

A13.1 **Scope**
(This Standing Order may not be suspended)

Motions must be about matters for which the Council has a responsibility or direct ability to influence and/or control and must not include declaratory statements relating to matters wholly outside the ambit of the Council.

A13.2 **Notice**

(a) Except for motions which can be moved without notice under Standing Order A14, written notice of every motion, signed (or sent by e-mail and verified by the Head of Governance Support) by the proposer and seconder, must be delivered to the Head of Governance Support by 4.00 p.m. ten clear working days before the date of the Council meeting or, for matters which relate to Cabinet functions, the Cabinet meeting. For matters relating to Cabinet functions the proposer and seconder shall be referred to as the promoter and supporter where those members are not members of the Cabinet.

(b) The Chief Executive (in consultation with the Civic Mayor in respect of Council motions or the Leader of the Council in respect of Executive motions) may decline to accept any notice of a motion if it is in his/her opinion:

(i) factually inaccurate; or

(ii) it is identical or materially similar to a motion which has been presented to a meeting of Council, the Cabinet or a Council committee within the 12 months preceding the meeting; or

(iii) it is illegal, defamatory, scurrilous, irrelevant or otherwise objectionable.

Where a member's Notice of Motion may be declined by the Chief Executive, the Chief Executive will provide the reason(s) for this and where possible assist the member to amend the declined Motion so that it is acceptable.

(c) Motions for which notice has been given and require a council decision will be listed on the agenda in the order in which notice was received, unless the proposer and seconder giving notice state, in writing (including by e-mail if verified by the Head of Governance Support), that they propose to move it to

a later meeting or withdraw it. The Civic Mayor may alter the order in which Notices of Motion are taken on the agenda if he/she considers this will facilitate the efficient running of the meeting. Motions which subject matter comes within the province of the Cabinet or any Council Committee will be included on the relevant agenda for those decision-making bodies

(d) Motions which result in financial implications for the Council must include an outline of such implications together with advice from the Council's Finance Officer (including an officer report where required). Where there is insufficient time to enable a robust assessment of the financial implications the Motion will stand deferred to a subsequent meeting.

A13.3 **Procedure**

(a) If the subject matter of any motion comes within the province of the Cabinet or any Council committee, it shall stand referred to the Cabinet or committee, as appropriate, without inclusion on the Council agenda. Cabinet Standing Orders sets out the procedure for consideration of Notice of Motions at Cabinet. Matters referred to a Council committee will be placed on the next available agenda and the Committee will determine whether to request officers to prepare a report on the matter for consideration at a future meeting.

(b) If the subject matter does not fall within the remit of the Cabinet or a Council committee, the Council may deal with the matter immediately via normal rules of debate.

A13.4 **Motions affecting the setting of the Budget**
(This Standing Order may not be suspended)

Written notice of every proposed amendment (or objection in the case of the first meeting of Council at which the Cabinet's proposals will be considered) to a recommendation affecting the setting of the Budget, signed (or sent by e-mail and verified by the Head of Governance Support) by the member (or members), must be delivered to the Head of Governance Support by 4.00 p.m. two clear working days before the commencement of the meeting (including any adjourned meetings) at which the setting of the Budget is to be considered. These will be published on the Council's website, after approval by the Chief Executive, and be open to public inspection. The provisions in A13.2 (b) will apply.

A14. Motions which may be moved without Notice and/or during debate (To apply to Committees, Cabinet and Overview and Scrutiny)

A14.1 The following motions may be moved during the meeting:

(i) to appoint a Chair for that meeting at which the motion is moved;

(ii) in relation to the accuracy of the minutes;

(iii) to change the order of business in the agenda;

(iv) to refer something to an appropriate body or individual;

(v) to appoint a committee or member arising from an item on the summons for the meeting;

(vi) to receive reports or the adoption of recommendations of the Cabinet (or committees or individual members of the Cabinet), committees, sub-committees, working parties or officers and any resolutions following on from them;

(vii) to withdraw a motion;

(viii) to amend a motion;

(ix) to proceed to the next item of business;

(x) that the motion/amendment be now put to the vote;

(xi) to adjourn a debate;

(xii) to adjourn a meeting;

(xiii) that the meeting continue beyond four hours in duration;

(xiv) to suspend a particular Council Standing Order (subject to Standing Order A29);

(xv) to exclude the public and press in accordance with the Standing Orders in relation to Access to Information;

(xvi) to not hear further a member or to exclude them from the meeting where that member is behaving improperly or offensively or is deliberately obstructing business;

(xvii) to give the consent of the Council where its consent is required by this Constitution; and

(xviii) any motion relating to the use of cameras or the audio or visual recording of the proceedings of the meeting.

A15. Rules of Debate. See flowcharts at appendices 1 and 2

These rules do not apply for the consideration of Planning or Licensing applications. Standing Order 22 below sets out the rules of debate for such applications.

A15.1 **No speeches until motion moved and seconded**

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

A15.2 **Right to require motion or amendment in writing and adjournment for un-tabled amendments**

Unless notice of the motion has already been given, the Civic Mayor may require it to be written down and handed to him/her before it is discussed. The Civic Mayor may also require an amendment to be written down and handed to him/her

before it is discussed. The Civic Mayor shall call a short adjournment for any un-tabled amendments to enable members to confer within their groups.

A15.3 **Seconder's speech**

When seconding a motion or amendment, a member may reserve their speech until later in the debate (note: if a member does reserve their speech until later in the debate and that member wishes to speak later in the debate they must raise their hand/indicate such wish to the Civic Mayor).

A15.4 **Content of speeches**

A member's speech must relate to the business under discussion or to a personal explanation or point of order.

A15.5 **Length of speeches**

No speech or response may exceed five minutes without the consent of the Civic Mayor except the opening speeches on the revenue budget by the Leader of the Council and the leaders of each political group at the annual budget setting meeting, which shall not exceed fifteen minutes without the consent of the Civic Mayor.

A15.6 **When a member may speak again**

A member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

(i) to speak once on any amendment;

(ii) to move a further amendment if the motion has been amended since he/she last spoke;

(iii) if his/her first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);

(iv) in exercise of a right of reply (under Standing Order A15.10);

(v) on a point of order (under Standing Order A15.12);

(vi) by way of personal explanation (under Standing Order A15.13).

A15.7 **Amendments to motions**

(a) An amendment to a motion must be reasonably relevant (in the opinion of the Chief Executive) to the motion and must seek to:

(i) refer the matter to an appropriate body or individual for consideration or reconsideration;

(ii) delete words;

(iii) delete words and add other words; or

(iv) add words,

and an amendment that otherwise complies with this Standing Order shall be valid even if the direct or indirect consequence of the amendment (if carried) would be to negate the motion (except amendments made at Planning Committee).

Assistance with drafting amendments will be provided by the Head of Governance Support where requested and the Head of Governance Support will involve the relevant officers for their professional advice. Where officer advice is sought in advance on amendments, this advice will be provided in confidence and not shared with any other members unless instructed to do so by the member preparing the amendment. The mover of an amendment prepared in advance of the meeting will confirm with the Head of Governance Support when they wish the amendment to be shared.

(b) Only one amendment may be moved and discussed at any one time except that the Civic Mayor may permit more than one amendment to be debated at the same time if he/she considers this would facilitate the efficient running of the business and if a majority of members present do not object. No further amendment may be moved until the amendment under discussion has been disposed of. Amendments to motions will be moved at the earliest possible opportunity during the debate.

(c) If an amendment is not carried, other amendments to the original motion may be moved.

(d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which further amendments may be moved. At the end of the debate, the substantive motion will then be put to the vote.

(e) For the avoidance of doubt no amendment can be made to the motion to set the Council Tax.

A15.8 **Amendment of motions by proposer**

(a) A member may request, with the consent of the seconder, to alter a motion of which he/she has given notice. If there is no objection to the request it shall be amended as proposed. If there is an objection, the request to alter the motion shall be put to the vote without debate.

(b) A member may alter a motion which he/she has moved without notice with the consent of the seconder.

(c) Only alterations which could be made as an amendment (in accordance with Standing Order A15.7) may be made.

A15.9 **Withdrawal of motions**

A member may withdraw a motion which he/she has moved with the consent of the seconder. No member may speak on the motion after the mover has asked permission to withdraw it unless the seconder refuses consent to withdraw the motion.

A15.10 **Right of reply**

(a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

(b) If an amendment is moved, the mover of the amendment has the right of reply before the mover of the original motion. The mover of the original motion then has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it. This Standing Order also applies if the amendment is carried and further amendments are moved.

(c) The mover of the amendment has no right of reply to the debate on his/her amendment.

A15.11 **Procedural Motions which may be moved during debate**

When a motion is under debate, the following procedural motions may be moved:

(i) to proceed to the next business;

If a motion to proceed to the next business is seconded and the Civic Mayor thinks the item has been sufficiently discussed, he/she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

(ii) that the motion/amendment be now put to the vote;

If a motion that the motion/amendment be now put to the vote is seconded and the Civic Mayor thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

(iii) to adjourn a debate;

If a motion to adjourn the debate is seconded and the Civic Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply. If the motion is carried and no timeframe is explicit the discussion will be resumed at the next ordinary meeting of the Council and the member who moved its adjournment shall be entitled to speak first. If the motion to adjourn is lost, a second motion for adjournment may be moved during the same meeting and the Civic Mayor thinks a reasonable amount of time has lapsed since the last motion to adjourn.

(iv) to adjourn a meeting;

If a motion to adjourn the meeting is seconded and the Civic Mayor shall invite the Chief Executive, Monitoring Officer and Chief Finance Officer to indicate whether there is any other business that they believe should be transacted at that meeting (in accordance with Standing Order A11.2) and it shall be put to the vote without debate and without giving the mover of the original motion the right of reply.

(vii) that the meeting continue beyond four hours in duration;

If a motion that the meeting continue beyond four hours in duration or a motion to adjourn the meeting is moved, the Civic Mayor shall invite the Chief Executive, Monitoring Officer and Chief Finance Officer to indicate whether there is any other business that they believe should be transacted at that meeting (in accordance with Standing Order A11.2) and if the motion is then seconded it shall be put to the vote without debate.

(viii) to exclude the public and press in accordance with the Standing Orders in relation to Access to Information; and

If a motion to exclude the press and public in accordance with the Standing Orders in relation to Access to Information is seconded, it shall be put to the vote without debate but the Civic Mayor may invite the Chief Executive and/or the Monitoring Officer to advise on the matter.

(ix) in accordance with Standing Order A25 (members' conduct), to not hear further a member or to exclude them from the meeting.

A15.12 **Point of order**

A member may raise a point of order, subject to first obtaining the consent of the Civic Mayor. The Civic Mayor will determine when they are heard, either immediately or after the member speaking has finished their speech. A point of order may only relate to an alleged breach of these Council Standing Orders, a significant factual inaccuracy or a breach of the law. The member must indicate the Standing Order, the alleged significant factual inaccuracy or the law (and the way in which he/she considers it has been broken, or is inaccurate) before speaking further. The ruling of the Civic Mayor on the matter will be final.

A15.13 **Personal explanation**

A member may make a personal explanation, subject to first obtaining the consent of the Civic Mayor. The Civic Mayor will determine when they are heard, either immediately or at an appropriate point during the debate. A personal explanation may only relate to some statement by, or material fact relating to, the member which may appear to have been misunderstood in the present debate. The ruling of the Civic Mayor on the admissibility of a personal explanation will be final.

A15.14 **Briefings by Officers**

In exceptional circumstance and with the consent of the Civic Mayor, the Chief Executive may request officers to provide members with a briefing at the Council meeting on agenda items before they are considered by the Council. The Civic Mayor will allow each member a maximum of two questions to the officer presenting. Questions must only relate to factual elements of the matter under discussion and not draw the officer into the debate of the Council.

A16. State of The Borough Debate

A16.1 **Calling of debate**

The Leader of the Council or Civic Mayor may call a State of the Borough debate annually to be held at the first ordinary meeting of the Council after the Annual Council meeting or on such other occasion to be determined by the Civic Mayor in consultation with the Leader of the Council.

A16.2 **Form of debate**

The Leader of the Council in consultation with the Civic Mayor (or the Civic Mayor if calling the debate) may decide the form of the debate with the aim of enabling the widest possible public involvement and publicity. This may include holding workshops and other events prior to or during the State of the Borough debate.

A16.3 **Chairing of debate**

The debate will be chaired by the Civic Mayor.

A16.4 **Results of debate**

The results of the debate will be:

(i) disseminated as widely as possible within the community and to agencies and organisations in the area; and

(ii) considered by the Cabinet in proposing the budget and policy framework to the Council for the coming year.

A17. Previous Decisions and Motions **(To apply to Committees and Overview and Scrutiny)**

A17.1 **Motion to rescind a previous decision**

A motion or amendment to rescind a non-Executive decision made at a meeting of Council within the past six months cannot be moved unless:

(i) the notice of motion is signed by at least the same number of members as would make the meeting quorate; or

(ii) an amendment is moved at a meeting, which seeks to rescind a previous decision, which is supported by at least the same number of members as would make the meeting quorate to enable the matter to be debated; or

(iii) the motion or amendment is substantially in accordance with a recommendation contained in an officer report.

No resolution shall be rescinded if, in the opinion of the Monitoring Officer, it would infringe on any third party's legal rights or be likely to result in a finding of maladministration against the Council.

This Standing Order does not apply to a decision that has previously been rescinded.

A17.2 **Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless:

(i) the notice of motion or amendment is signed by at least the same number of members as would make the meeting quorate; or

(ii) an amendment moved at a meeting is supported by at least the same number of members as would make the meeting quorate to enable the matter to be debated; or

(iii) the motion or amendment is substantially in accordance with a recommendation contained in an officer report.

A18. Voting (To apply to Committees, Cabinet and Overview and Scrutiny except A18.5)

A18.1 **Majority**
(This Standing Order may not be suspended)

Prior to voting the Civic Mayor will read out the motion or amendment due to be voted upon if he/she considers the debate has been complex and clarity is needed before taking the vote. Unless this Constitution or the law provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the motion was put.
(Schedule 12 of the Local Government Act 1972)

A18.2 Civic Mayor's casting vote
(This Standing Order may not be suspended)

If there are equal numbers of votes for and against, the Civic Mayor (whether or not he/she has voted) will have a casting vote. There will be no restriction on how the Civic Mayor chooses to exercise a casting vote, save that he/she must use his/her casting vote for the election of the Civic Mayor at the Annual Council meeting in the case of an equality of votes.
(Schedule 12 and Section 4 of the Local Government Act 1972)

A18.3 **Method of Voting**

Unless a recorded vote is demanded under Standing Order A18.4, the Civic Mayor will take the vote by a show of hands or by an appropriate alternative means determined by the Civic Mayor.

A18.4 **Recorded vote**

If at least the same number of members as would make the meeting quorate demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

A18.5 **Recorded vote at budget meetings**
(This is a mandatory standing order under The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014 and may not be suspended)

Recorded votes will be taken on any decision relating to the budget or Council Tax, including any amendments and substantive motions on agreeing the budget, setting, Council Tax or issuing precepts.

A18.6 **Right to require individual vote to be recorded**
(This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations 1993 and may not be suspended.)

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting. The member must ensure the Governance Support Officer present at the meeting is made aware of how they voted for the minutes.

A19. Minutes
(This Standing Order may not be suspended)

A19.1 **Signing the minutes (To apply to Committees, Cabinet and Overview and Scrutiny)**

The Civic Mayor will sign the minutes of the proceedings at the next suitable meeting (Schedule 12 of the Local Government Act 1972/Local Authorities (Standing Orders) Regulations 1993). The Civic Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

A19.2 **No requirement to sign minutes of previous meeting at extraordinary meeting**
(This is a mandatory standing order under the Local Authorities (Standing Orders) Regulations 1993 and may not be suspended. The language is constrained by that permitted in the regulations.)

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of Schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of Schedule 12 relating to signing of minutes.

A19.3 **Form of minutes (To apply to Committees, Cabinet and Overview and Scrutiny)**

Minutes will include all decisions in the form and order they were taken at the meeting.

A20. Record of Attendance (To apply to Committees, Cabinet and Overview and Scrutiny) (This Standing Order may not be suspended)

A20.1 The Governance Support Officer will make a record of all members present during the whole or part of a meeting before the conclusion of every meeting to assist with the record of attendance. The official attendance record will be held in the minutes of the meeting.
(Schedule 12 of the Local Government Act 1972)

A21. Exclusion of Public (To apply to Committees, Cabinet and Overview and Scrutiny) (This Standing Order may not be suspended)

A21.1 Members of the public and press may only be excluded either in accordance with the Standing Orders in relation to Access to Information or Standing Order A26 (Disturbance by Public).

A22. Representations In Respect Of Planning and Licensing Applications (To apply to Committees)

A22.1 Members of the public shall be entitled to speak at meetings of the Council, committees or sub-committees during the consideration of:

(i) any application for approval or consent required under the Town and Country Planning legislation; and

(ii) any licensing applications that fall outside the Licensing Act 2003.

in accordance with the following provisions and in accordance with Standing Order A24.4 below.

A22.2 Any member of the public or person who is not a member of the Committee who wishes to speak shall notify the Head of Governance Support or his/her representative by 11.00 am on the day of the meeting he/she wishes to speak at or at lesser notice at the discretion of the Civic Mayor.

A22.3 The following procedure shall apply in respect of each item:

(i) introduction of item by officer;

(ii) representations by objector(s);

(iii) Brixham Town Councillors (including as Brixham Peninsula Neighbourhood Forum) (if it relates to a Brixham application or area covered by the Brixham Peninsula Neighbourhood Plan);

(iv) representations by Torquay Neighbourhood Forum (if it relates to an application in the area covered by the Torquay Neighbourhood Plan);

(v) representations by Broadsands, Churston and Galmpton Neighbourhood Forum (if it relates to an application in the area covered by the Broadsands, Churston and Galmpton Neighbourhood Forum);

(vi) representation by a Councillor who is not a member of the Planning Committee;

(vii) representations by applicant, agent or supporters;

(vii) in exceptional circumstances, the Civic Mayor may permit Members of the Committee to ask for clarification from the registered speakers outlined in (i) to (vi) above immediately following their presentation.

(viii) Once all questions have been asked, a motion will be put forward and seconded to open the application for debate, the options for the motion include:

1. Approval (with or without conditions); or
2. Refusal (with reasons); or
3. Deferment for further information or a site visit; or
4. Delegation for determination by an officer or other Committee of the Council.

(ix) Members may speak more than once on a motion;

(x) During the debate if any further additions (such as reasons for refusal or additional conditions) are suggested to the motion, the Civic Mayor will seek consent of the proposer and seconder for these to be included in the original motion. If consent is not forthcoming, then a further motion can be moved once the motion on the table has been dealt with;

(xi) prior to the vote on the motion, the Civic Mayor will confirm the details of the motion, including asking the Planning Officer to clarify if there are any additional technical conditions required or reasons for refusal; and

(xii) a vote will be taken on the motion and the Chair will announce the result of the vote. If the motion fails the Civic Mayor will invite Members to propose an alternative motion which will be subject to debate prior to the vote and following (viii) to (xi) above.

A22.4 The total time allowed for speeches in respect of each of the following groups of speakers shall not exceed five minutes or such period as the Civic Mayor may allow:

(a) objectors;

(b) applicant, agent or supporters;

(c) Brixham Town councillors;

(d) Torquay Neighbourhood Forum; and

(e) Broadsands, Churston and Galmpton Neighbourhood Forum.

A22.5 Where more than one objector to or supporter of an application wishes to speak, the Civic Mayor may if he/she considers it convenient and conducive to the despatch of business of the meeting require that a spokesperson be appointed to represent the views of the objectors or supporters as the case may be.

A22.6 The Civic Mayor shall ensure, as far as is practicable, that both objectors and supporters are given the opportunity to speak but an application will not normally be deferred merely because one side is unable or does not wish to be present.

A22.7 Brixham Town Council (including when acting as Brixham Peninsula Neighbourhood Forum), Torquay Neighbourhood Forum and Broadsands, Churston and Galmpton Neighbourhood Forum may nominate a representative to speak on a planning application in relation to their respective areas.

A22.8 The Civic Mayor may:

(i) suspend the operation of this Standing Order during the consideration of any application or for the remainder of the meeting if he/she considers it necessary so to do for the purpose of maintaining order at the meeting; or

(ii) vary the order of representations if he/she considers that it is convenient and conducive to the despatch of business and will not cause any prejudice to the parties concerned.

A22.9 Guidance on representations in respect of licensing (2003 Act) applications is available in the Local Code of Good Practice for Members and Employees Involved in the Licensing Process.

A22.10 Guidance on representations from Brixham Town Council, Torquay Neighbourhood Forum and Broadsands, Churston and Galmpton Neighbourhood Forum is available in the Local Protocol – Consultation Arrangements with Town/Parish Councils and Neighbourhood Forums for Planning Applications.

(Note: This Standing Order A22 shall also apply to a member with an interest that means they should not be present when the matter is under consideration but who wishes to make a representation in respect of a planning or licensing application, but having made his/her representations he/she must withdraw from the meeting room and cannot vote on the matter.)

A23. Petitions

A23.1 The Council will consider petitions received in accordance with its Petition Scheme (as set out in Appendix 3 to these Standing Orders).

A24. Public Question Time

A24.1 Members of the public shall be entitled to ask questions/make statements during the Question Time sessions held at the meetings of Council. The total time allowed for questions or statements shall not exceed 30 minutes except with the consent of the Civic Mayor and a maximum of three public questions may be asked at a single meeting. Questions submitted will be dealt with in the order they are received, with any questions submitted after the maximum number for the Council meeting has been reached refused and referred back to the person asking the question. The Civic Mayor may allow additional questions in exceptional circumstances, those circumstances to be determined by the Civic Mayor. Questions/statements must:

(a) relate to the Council and/or the services it provides (or are provided on its behalf) to local people or to a matter that affects local people more than

the general public nationally and is relevant to the area or areas of responsibility of the person to whom the question or statement is directed;

(b) do not relate to planning or licensing applications to be considered by the Authority;

(c) do not relate to any matter where public consultation is being undertaken in the next six months by the Council; and

(d) are provided to the Head of Governance Support in writing (including by e-mail if verified by the Head of Governance Support) by no later than 4.00 p.m. on the tenth clear working day before the date of the meeting in order that a suitable response may be prepared. The Civic Mayor may permit a question/statement after this deadline in exceptional circumstances, those circumstances to be determined by the Civic Mayor, and the questioner has given a copy of his/her question to the Head of Governance Support by 4.00 p.m. two clear working days prior to the meeting.

However, the Chief Executive, in consultation with the Civic Mayor may decline to accept any question or statement if it is in his/her opinion:

(i) factually inaccurate; or

(ii) it is identical or materially similar to a question which has been presented to a meeting of Council or a Council committee within the 12 months preceding the Council meeting; or

(iii) it is illegal, defamatory, scurrilous, irrelevant or otherwise objectionable; or

(iv) to respond to the question or statement would require a disproportionate amount of officer time (having regard to any possible benefits such work would deliver) and the question or statement is not of such nature that would require a response if made pursuant to the Freedom of Information Act 2000.

And the reasons for rejection will be provided.

A24.2 The Head of Governance Support will immediately send a copy of the question/statement to the member to whom it has been put and publish the questions/statements.

A24.3 No person may submit more than one question at any one meeting, and no more than one such question may be asked on behalf of an organisation.

A24.4 Each person addressing the meeting shall be restricted to five minutes of speech or such period as the Civic Mayor may allow. Any persons addressing the Council under this Standing Order may only refer to matters relevant to the question or statement and shall:

(a) not use discriminatory or offensive language;

(b) not make any party political statements;

(c) not use personal abuse; and

(d) treat others with courtesy and with respect.

If the Civic Mayor considers that any of these requirements have been breached he/she may take such action as he/she considers appropriate (including prohibiting the person addressing the Council from speaking further).

A24.5 Questions shall be directed to the Civic Mayor, who may request:

(i) the Leader of the Council;

(ii) a member of the Executive;

(iii) the Chair of any committee (including the Overview and Scrutiny Board or sub-committee);

(iv) a Council representative on an outside organisation

to reply. The Civic Mayor, Leader of the Council or other Councillor may, in turn, request an appropriate officer or his/her representative to reply.

If a questioner who has submitted a written question is unable to be present, they may ask the Civic Mayor to put the question on their behalf or the Civic Mayor can decide to put the question. The Civic Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with.

A24.6 Every question shall be put and answered without discussion although the questioner may be permitted by the Civic Mayor to ask one supplementary question provided that it is relevant to the original question (or the response thereto) and his/her allocation of five minutes is not exceeded (subject to Standing Order A24.4).

A24.7 Where a statement is made, this will not be responded to at the meeting.

A24.8 Five minutes shall be allocated for the response to a question and shall take the form of:

(i) a direct oral answer; or

(ii) where the reply to the question cannot conveniently be given orally, an undertaking that a written reply will be provided.

A24.9 Unless the Civic Mayor decides otherwise, no discussion will take place on any question or statement, but any member may move that a matter raised by a question or statement be referred to the Executive or appropriate committee or sub-committee. Once seconded, such a motion will be voted on without discussion.

A24.10 Copies of all questions will be circulated to all members and will be made available to the public attending the meeting.

(Note: This Standing Order A24 shall also apply to a member with an interest that means they should not be present when the matter is under consideration but who wishes to make a representation, but having made his/her

representations he/she must withdraw from the meeting room and cannot vote on the matter.)

A25. Members' Conduct (To apply to Committees, Cabinet and Overview and Scrutiny)

A25.1 **Members addressing the meeting**

When a member addresses a meeting of the Council they must make themselves clearly identifiable and address the meeting through the Civic Mayor. If more than one member seeks to address the meeting, the Civic Mayor will rule on the order on which they may address the meeting. Other members must behave in an appropriate manner whilst a member is addressing the meeting and not interrupt unless they wish to move a motion under Standing Order A15.11 or to make a point of order or a point of personal explanation. When making a point of order or point of personal explanation, once requested the member making the request must sit down and not speak again until invited to do so by the Civic Mayor.

A25.2 **Civic Mayor calling the meeting to order**

When the Civic Mayor calls to order, whether by standing or banging his/her gavel or by some appropriate means during a debate, any member addressing the meeting at the time must stop and sit down. The meeting must be silent.

A25.3 **Member not to be heard further**

If a member behaves improperly or offensively or deliberately obstructs business, the Civic Mayor or the Council by resolution may determine that the member in question be not heard further in respect of the item under discussion.

A25.4 **Member to leave the meeting**

If the member continues to behave improperly after a motion under A25.3 is carried, the Civic Mayor may either determine that (a) the member in question leaves the meeting in respect of the item under discussion or for the remainder of the meeting, as appropriate, or (b) that the meeting is adjourned for a specified period.

A25.5 **General disturbance**

If there is a general disturbance making orderly business impossible, the Civic Mayor may adjourn the meeting for as long as he/she thinks necessary.

A25.6 **Addressing other members**

At meetings of the Council, its committees and sub-committees, members shall address each other as “councillor” followed by the member’s surname. At meetings of the Council, the Civic Mayor shall be addressed as the Worshipful the Mayor of Torbay or such other title as he/she may reasonably choose, but at meetings other than Council the Civic Mayor shall be referred to as “councillor” followed by his/her surname.

A25.7 **Members Leaving During the Meeting**

Where a Member leaves the meeting room temporarily during the meeting for whatever reason, they shall acknowledge the Civic Mayor by nodding their head (or by another appropriate means) and leave the chamber. Where a Member leaves the meeting room permanently before the end of the meeting (or its formal adjournment) they shall give their apologies to the Civic Mayor (either immediately prior to their departure or earlier during the meeting or immediately prior to its commencement) and their departure shall be recorded in the minutes.

A26. Disturbance by Members of the Public (To apply to Committees, Cabinet and Overview and Scrutiny)

A26.1 **Removal of member of the public**

If a member of the public interrupts proceedings or behaves improperly or offensively, the Civic Mayor will warn the person concerned. If they continue to interrupt or behave improperly or offensively, the Civic Mayor may order their immediate removal from the meeting and the premises. If the Civic Mayor considers behaviour to be grossly improper or offensive he/she may order the immediate removal of the person from the meeting and the premises without warning. The person concerned shall not be permitted re-entry to the premises for the duration of the meeting.

A26.2 **Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Civic Mayor may call for that part to be cleared.

A27. Use of Cameras and Tape and Video Recorders (To apply to Committees, Cabinet and Overview and Scrutiny)

A27.1 Any persons present at the meeting may, unless prohibited or restricted by a resolution, take photographs, make audio or visual recordings and make live stream recordings on social media of the proceedings of meetings of the Council, its committees and sub-committees. However, no flash photography or other artificial light source shall be used without the prior approval (which may be withdrawn or conditional) of the person presiding at the meeting concerned.

A27.2 The Head of Governance Support may make arrangements for the electronic recording (including filming) of those parts of the meetings of Council, Planning Committee and Standards Hearings Sub-Committee at which the press and public are entitled to be present.

A28. Prohibition of Smoking, Alcohol and Drugs at Council Meetings (To apply to Committees, Cabinet and Overview and Scrutiny)
(This Standing Order may not be suspended)

A28.1 No member or officer or member of the public shall smoke (this includes any electronic smoking devices), consume (or, in the opinion of the Civic Mayor be incapacitated by) alcohol and/or illegal drugs at any council meeting.

A29. Suspension and Amendment of Standing Orders In Relation To Council Procedure (To apply to Committees, Cabinet and Overview and Scrutiny) (This Standing Order may not be suspended)

A29.1 **Suspension**

All of these Standing Orders in relation to Council except Standing Orders A1, A2, A3, A4, A5, A7, A8, A9, A10, A13.1, A13.4, A18.1, A18.2, A18.5, A18.6, A19, A20, A21, A28 and A29 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

A29.2 Any motion to suspend any Standing Order (or part of any Standing Order) shall indicate the Standing Order (or part thereof) to be suspended.

A29.3 **Amendment**

Any motion to add to, vary or revoke these Standing Orders in relation to Council and Meetings will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council (unless the Monitoring Officer agrees otherwise).

A29.4 **Conflict between Standing Orders and the law**

If any Standing Order does not comply with any relevant legal requirement (whether arising from statute, subordinate legislation, EU directives or case law), that Standing Order shall be deemed to be amended so far as shall be necessary to comply with the legal requirement in question

A30. Interpretation (To apply to Committees, Cabinet and Overview and Scrutiny)

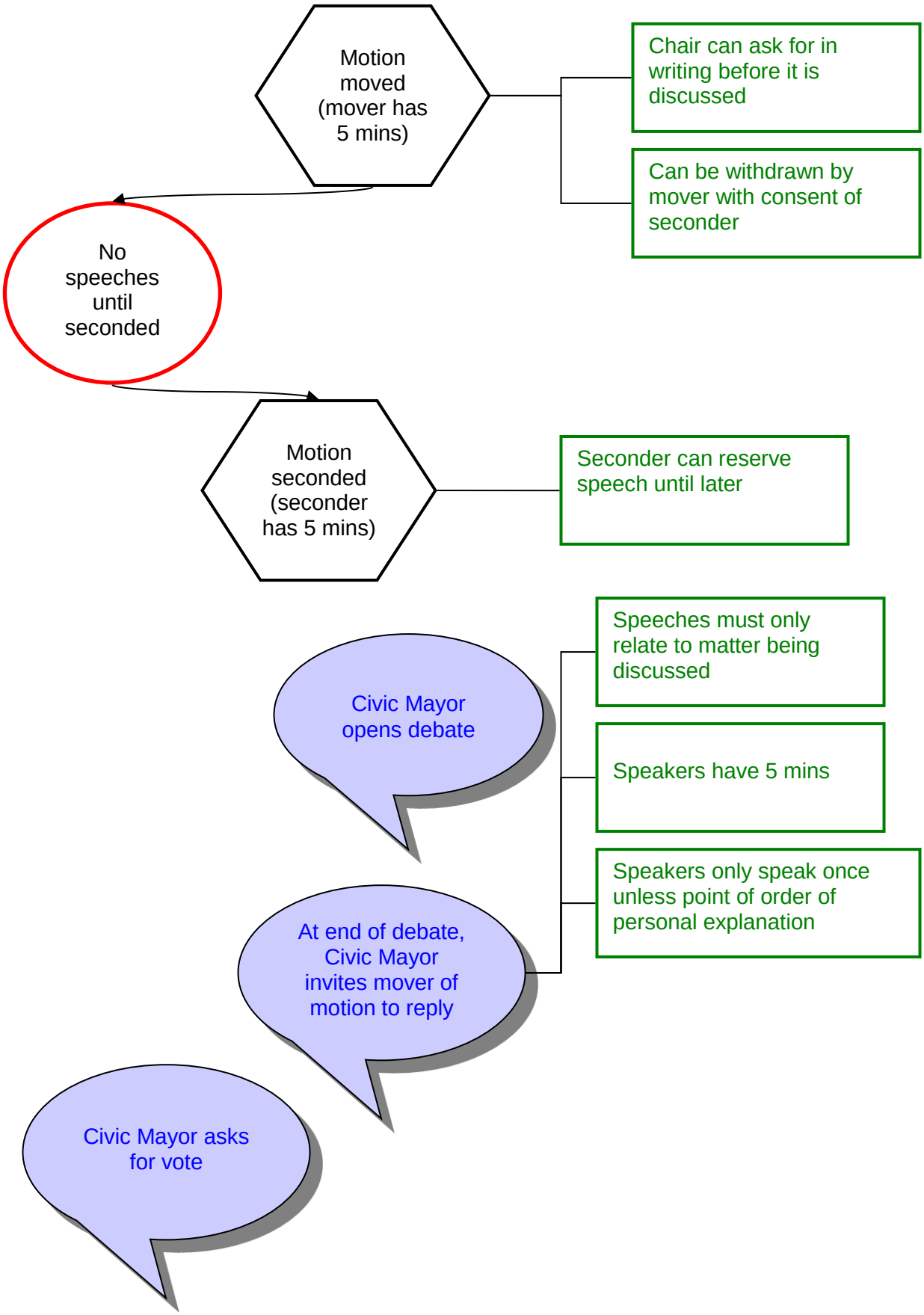
A30.1 Any references to writing or speaking in these Standing Orders shall be deemed to include any other means of communication that are reasonably appropriate having regard to any person's disabilities or special needs.

A30.2 The Civic Mayor's ruling on the interpretation of these Standing Orders and on the conduct of the proceedings shall be final.

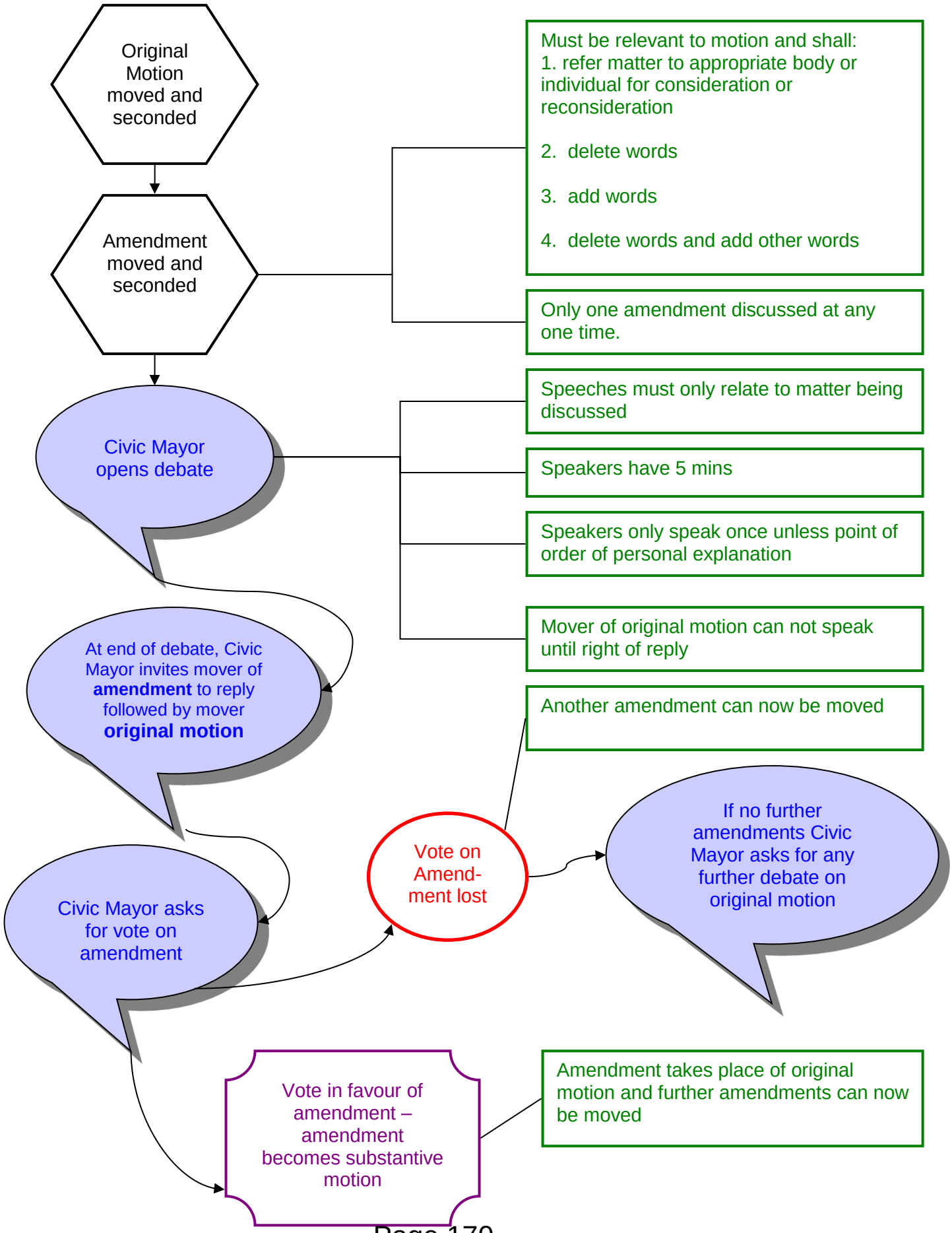
A31. Application of Standing Orders in Relation to Access to Information to Meetings of The Council

A31.1 The following Standing Orders in relation to Access to Information will apply to meetings of the Council: E1 to E11, E19 and E20.

Appendix 1 Standing Order A16 Rules of Debate – Motions without Amendment



Appendix 2 Standing Order A16 Rules of Debate – Amendments to Motions



Appendix 3 - Petition Scheme

Contents

1. Introduction
2. What are the guidelines for submitting a petition?
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1. Introduction

A petition is a request for Torbay Council to consider an issue or concern or to take a particular course of action. Petitions set out a particular view point and can be a useful tool to demonstrate that a view is shared by others. The Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns.

This document sets out the guidelines for submitting a petition and what you can expect from the petitions process.

To meet the requirements of the scheme, the petition must be about:

- **an issue which relates to the Council and/or services it provides to local people;**
- **an improvement in the economic, social or environmental well-being of Torbay to which any of the Council's partner authorities could contribute'; or**
- **to issues which relate to services provided by partner authorities, including matters which are sub-regional and cross-authority;**

Petitions can be submitted in paper format or can be scanned and sent electronically. There is also a *Torbay Council e-petitions* facility available (this is a method of starting a petition and gathering signatures online which allows petitions and supporting information to be made available to a much wider audience). We are also happy to accept e-petitions generated from third party facilities, but only if they meet the submissions criteria set out in this scheme – including, for example, by providing sufficient information to enable the Council to verify signatures in support of the petition.

2. What are the guidelines for submitting a petition?

Petitions submitted to the Council **must** include *(see Appendix 1 for a sample paper petition template)*:

- **A clear and concise statement covering the subject of the petition**. It should state what action the petitioners wish the Council to take.

- **The subject matter of the petition on each page.** People need to know what they are signing and therefore the petition should clearly state this on each page.

- **The petition organiser's contact details.** Including a phone number and address, – this will be the person who we will contact to explain how we will respond to the petition.

- **At least 25 valid signatures.** Anyone who lives, works or studies in the Torbay area, including under 18's, can sign or organise a petition. In order for a signature to be valid it must be accompanied by the name and

address (which must include the name or number, street and town) of each person supporting the petition. The address provided should be that place of work or study if they do not live in the bay. To ensure the Council understands the local level of support for a petition, it reserves the right to seek to verify each signature submitted as part of a petition. This may be particularly significant when establishing whether a petition has obtained the required number of signatures to trigger a specific process (see section 6 below Full Council Debate).

In the case of e-petitions, (including those submitted from other online petition facilities) the Council requires a name, valid email address (one email address per person), address (including the name or number, street and town) for each person supporting the petition; failure to provide this information may lead to a signature not being counted.

The Council may also ask for additional information it may require to confirm that the petition complies with the requirements of this scheme.

The Council's Monitoring Officer may decline to accept any petition where in his/her opinion the petition does not include any of the above.

3. Are there any issues which the Council will not consider in a petition?

3.1 There are certain circumstances when petitions will not be accepted by the Council's Monitoring Officer, this mirrors the UK Parliament and Government petition rules and includes if a petition:

- calls for the same action as a petition that's already open
- does not ask for a clear action from the Council
- relates to an issue which is clearly outside the control or reasonable influence of the Council (e.g. petitions on national issues)
- is defamatory or libellous, or contains false or unproven statements
- refers to a case where there are active legal proceedings
- contains material that may be protected by an injunction or court order
- contains material that could be confidential or commercially sensitive
- could cause personal distress or loss. This includes petitions that could intrude into someone's personal grief or shock without their consent.
- accuses an identifiable person or organisation of wrongdoing, such as committing a crime
- names individual officers, unless they are Divisional Directors or above
- names family members of councillors or officers
- asks for someone to be given a job, or to lose their job. This includes petitions calling for someone to resign and petitions asking for a vote of no confidence in an individual councillor or officer or the Cabinet as a whole
- contains party political material
- is nonsense or a joke
- is an advert, spam, or promotes a specific product or service

- is a Freedom of Information request
- contains swearing or other offensive language
- is offensive or extreme in its views. That includes petitions that attack, criticise or negatively focus on an individual or a group of people because of characteristics such as their age, disability, ethnic origin, gender identity, medical condition, nationality, race, religion, sex, or sexual orientation
- is a duplicate or substantially similar to a petition received in the last 12 months, unless there has been a material change in circumstances

Petitions made under other enactments, such as petitions under the Local Government Act 2000 asking for referendum on whether the area should have an elected mayor, will be dealt with according to the procedures set out in those enactments. If such a petition fails to meet the requirements of the enactment in question, for example a petition under the 2000 Act does not achieve the requisite number of signatures, it will then be dealt with through this Petitions Scheme in exactly the same manner as any other petition.

3.2 This Petitions Scheme does not apply to certain matters, where there are already existing processes for communities to have their say. The following matters are therefore excluded from the scope of this Petitions Scheme:

- Any matter relating to a planning decision,
- Any matter relating to a licensing decision,
- Any matter relating to a subject where consultation by the Council is currently being undertaken or is due to be undertaken in the next six months, (e.g. Formal Budget/Savings Proposals consultation).
- Any matter where there is already an existing right of appeal such as council tax banding and non-domestic rates.

We will advise the petition organiser what will happen to petitions under this category.

3.3 In the period immediately before an election or referendum we may need to deal with your petition differently. If this is the case we will explain the reasons and discuss the revised timescale which will apply.

4. How can I submit a petition?

Paper petitions may be submitted to the Council in person/by post to:

Governance Support
Torbay Council
Town Hall
Castle Circus
Torquay
TQ1 3DR

Alternatively, you can give your petition to your local councillor who will deliver it on your behalf.

Petitions can be emailed to:

Governance.support@torbay.gov.uk

For emailed petitions each sheet of signatures should be scanned in full as an exact replica of the original copy.

E-petitions may be submitted through the Council's *e-petitions facility* or via an independent online e-petition system and not via the Council's facility, however, in this case the Petition Organiser must ensure that the petition meets the submissions criteria set out in this scheme – including, for example, a valid email address (one email address per person), full name, address and postcode for each person supporting the petition to enable the Council to verify signatures on the petition.

The Council will also allow a combined paper and e-petition providing there are no duplicate signatories and the date of receipt is when the final submission is made.

Please note that we keep all original copies of petitions for our records for six years.

Upon submission of your petition, you need to advise the Governance Support Team whether you wish for your petition to be presented to a meeting of the full Council or referred directly to the decision maker for consideration. Please refer to section 6 below for further details.

5. Petition Deadlines

If you would like your petition to be presented at a Council meeting, (see details in section 6 below), it must be received by the Governance Support Team by 4.00 p.m. 10 clear working days before the meeting. The deadlines/dates of meetings can be found at (www.torbay.gov.uk).

Once approved and activated, a standard e-petition will remain open for 60 days. However this can be amended, following discussion with the petition organiser, to fit with timescales for specific meeting deadlines.

6. How will the Council respond to my petition?

All petitions received by the Governance Support Team will be acknowledged within 10 working days of receipt. The acknowledgement will be sent to the petition organiser and will explain what we plan to do with the petition and when you can expect to hear from us again. Your petition details will be provided to the Leader of the Council, the Civic Mayor, the Group Leaders and the Chief

Executive. Details of any petitions that have not been accepted for the reasons cited in 3.1 will also be provided to those listed above for information purposes.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed.

If the petition needs more investigation, we will tell you the steps we plan to take.

If the petition applies to a planning or licensing application, relates to a subject where consultation by the Council is currently being undertaken or is due to be undertaken in the next six months (e.g. Formal Budget/Savings Proposals consultation), or is a statutory petition on a matter where there is already an existing right of appeal (such as Council tax banding and non-domestic rates) other procedures apply. In our acknowledgment to you, we will explain these procedures and how you can express your views. Where a petition is passed to another department it may then become subject to any conditions relating to representations for such matters i.e. a petition in respect of a planning representation may be published in full which includes names and address of those who have signed the petition.

Petitions containing less than 50 signatures will not be presented to a Council meeting, but treated as general correspondence and forwarded directly to the relevant service department for response.

'Ordinary' petitions

For petitions containing at least 50 valid signatures you can present your petition to a meeting of the Council (which all Councillors can attend). Alternatively, you (as the petition organiser) and up to two other people who have signed the petition, can choose to meet directly with the relevant decision-maker to present your petition.

Once an 'ordinary' petition is received the Governance Support Team will write to you to inform you which body/decision-maker will respond to your petition and confirm which of the above options you would like to proceed with.

Presentation to Council

If you wish for the petition to be presented to a meeting of the Council you can speak in support of the petition at the meeting for up to five minutes. Confirmation of speaking in support of a petition must be received from the petition organiser by 4.00 p.m. the day before the Council meeting by registering with the Governance Support Team (by telephone on 01803 207087 or by e-mailing governance.support@torbay.gov.uk).

At each Council meeting, 30 minutes is allocated for the presentation of petitions received (except petitions with over 1,000 signatures – see further information below). To ensure sufficient time is allowed for presenting petitions a maximum of 5 petitions can be presented at a single Council meeting. The Civic Mayor may allow additional petitions in exceptional circumstances, those circumstances to be determined by the Civic Mayor. Petitions are included in the order that they have been received and once verified by the Governance Support Team.

Subsequent petitions will be included on the agenda for the following Council meeting unless requested by the lead petitioner not to do so and request that it is referred directly to the decision-maker or they wish to withdraw the petition.

Please note the petition will not be debated by the Councillors at the Council meeting, it will be referred straight to the relevant decision maker following the presentation of your petition at the meeting.

Also, if the subject of the petition is due to be considered by the decision-maker before the next meeting of the Council it will be referred to the decision-maker direct and you will not, therefore, have the opportunity to present the petition at a Council meeting.

Meeting with decision-maker
If you wish for the petition to be submitted directly to the decision-maker you will be informed of who will be contacting you to make the necessary arrangements for meeting with the-decision maker. This meeting will normally be arranged within 28 days from notifying the Governance Support Team of your decision to proceed with this option.

The decision-maker may respond to the issues raised in your petition in one or more of the following ways:

- Taking the action requested in the petition;
- Holding an inquiry into the matter;
- Undertake research into the matter;
- Hold a public meeting; and/or
- Undertake consultation.

Full Council Debates
If a petition contains more than 1000 valid signatures it will be debated by all Councillors at a meeting of the Council unless the matter is resolved before the meeting to the Petition Organiser's satisfaction. Petitions with over 1,000 valid signatures will be listed as separate agenda items for debate and are not subject to the 30 minutes time allocation, to enable debate.

You will receive notification from the Governance Support team with details of the Council meeting to which your petition will be submitted. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. You will be given five minutes to present the petition at the meeting and the petition will then be discussed by the councillors.

The Council will decide how to respond to the petition at this meeting, it may decide to:

- take the action the petition requests;
- not to take the action requested for reasons put forward in the debate;

- make recommendations to the Cabinet if the issue is one for them to make the decision; or
- commission further investigation into the matter, for example by a relevant committee.

The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

7. Feedback – will the petitioners be told of the outcome?

Yes, the Petition Organiser will receive written confirmation setting out the Council's final response to the petition. This will normally outline the steps taken by the Council to consider the issue, including the involvement (where applicable) of the elected Councillors.

We will also publish details of petitions received and the final response/outcome of the petition on the Council's website.

8. What can I do if I feel my petition has not been dealt with properly?

If you feel that we have not dealt with your petition properly, the petition organiser can complain through the Council's complaints procedure. The Governance Support Team can provide you with details of how to complain or you can find details on the Council's website (www.torbay.gov.uk).

9. Other ways to make your views known

Torbay Council values petitions and this document sets out clear commitment about how we will respond to the petitions we receive.

Petitions are not, however, the only - or necessarily the easiest or quickest - way to resolve an issue or to make your views known.

You can also:

- Contact the relevant Council service directly.
- Contact your local Councillor or Community Partnership if you have a concern which relates to your local area or neighbourhood.

If you wish to make a complaint about a Council service, then you should instead use the Council's Complaints Process.

There are a number of other ways you can have your say and get involved in local decisions. To find out more go to our website: http://www.torbay.gov.uk/index/yourcouncil/councillorsdecisions/haveyoursay.htm

10. Data Protection

If you are organising a petition you will need to consider whether you will become a data controller under Data Protection Law for the personal data you will process as part of the petition. Further information can be found on the ICO's website.

One of the key requirements of data protection law is that individuals should be informed as to how their personal data will be used. Therefore, you will need to advise those signing your petition, that their personal data may be made available for anyone to inspect, to confirm the validity of the petition.

Petitions received under this scheme will not be published in full and when they are presented to Council or to the decision maker, details are provided about the petition organiser and the number of people who have signed the petition. A full original copy of the petition is retained by the Governance Support Team.

Once we receive your petition, Torbay Council becomes the data controller for the petition and will process it in accordance with this scheme. Our lawful basis under Data Protection Law for processing this personal data, is that is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Council, in accordance with our duties to support and promote democratic engagement under the Local Government Act.

Should an individual wish for their name to be removed from a petition, they can make an information rights request via our website.

11. Special requirements

If you need any special help with accessing any Council buildings or if you have any special requirements please advise the Governance Support Team (using the contact details provided below) before the meeting.

To ask for a copy of this guide in another format or language, or for more information on petitions or Council meetings, please contact:

Governance Support on (01803) 207087
Email: governance.support@torbay.gov.uk

FAO: TORBAY COUNCIL

Petition Scheme Appendix 1

Subject of petition:	
Action required:	

Organiser/Main Contact for Petition	
Name:	Telephone number:
e-mail address:	
Address (including name or number, street, town):	

Using the guidance set out in this scheme please select the relevant petition type for your petition from the options below. If applicable, please also tick the box confirming whether you would like to present your petition by speaking at a Full Council meeting:

Ordinary (contains 25 signatures or more) ☐

please indicate where you wish to submit your petition:

Full Council Meeting ☐ or Direct to Decision Maker ☐

If you have chosen to submit your petition straight to a Full Council Meeting would you like to speak at the meeting? *please tick box below*

Yes ☐ Name of speaker: No ☐

Petitions for Council debate (contains 1000 signatures or more) ☐

please indicate if you would like to speak at the Council meeting

Yes ☐ Name of speaker: No ☐

FAO: TORBAY COUNCIL

Petition Scheme Appendix 1

Subject of petition:	

Name	Address (including name or number, street, town) or place of work or study if not a resident in Torbay	Signature

Please copy this page for further signatures

DATA PROTECTION: Torbay Council will become the data controller when the petition is submitted to the Council. The details you provide on this form will only be used for the purpose of this petition, however, please be aware that your name and address may be published in accordance with our petition scheme.

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Standing Orders – Committee and Sub-Committee Meetings

Contents

Standing Order

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B7. Application of Standing Orders in relation to Access to Information to meetings of committees and sub-committees

B1. Election/appointment of Chair and Vice-Chair
(To apply to Overview and Scrutiny)

B1.1 A Chair and Vice-Chair shall be elected/appointed for each Municipal Year at the Annual Council meeting for every committee and sub-committee, except for those committees and sub-committees which meet on an ad-hoc basis and require a different Chair for each meeting e.g. Licensing Sub-Committee, and that committee or sub-committee shall elect/appoint a Chair and a Vice-Chair for that meeting only

B1.2 In the absence of the Chair and Vice-Chair at any meeting, a Chair for that meeting shall be elected. Where the committee/sub-committee fail to nominate a Chair or there is an equality of votes on the nomination, the meeting will resolve to proceed without a Chair or the meeting will be adjourned. If the meeting resolves to proceed without a Chair, the most senior officer in attendance will call the agenda items and ensure a resolution is passed before moving to the next item. If a resolution is not passed the item shall stand deferred to the next meeting. The senior officer will not take part in the debate.

B2. Appointment of Substitute Members of Committees and Sub-Committees **(To apply to Cabinet and Overview and Scrutiny)**

B2.1 Where the membership of a committee or sub-committee has been determined as consisting of representatives of the political groups on the Council, such representatives may be varied by the respective groups provided notice of the variation (signed by the Leader or Deputy Leader of the group or the Leader of the Council in respect of Cabinet Members substituting at Cabinet meetings) has been delivered to the Head of Governance Support before the commencement of the meeting or adjourned meeting. For the avoidance of doubt any member may be appointed as a representative of a group on a committee or sub-committee if that member agrees to such appointment even if this means that the political balance of the committee does not reflect the political balance of the Council. The Chair of the Council shall not attend any meeting as a substitute.

B2.2 Where the notice has been delivered to the Head of Governance Support, it shall be effective until the end of the relevant meeting (including any adjourned meeting unless the substitution expressly excludes adjourned meetings or unless the variation only applied to one or more specific items and those items have been determined) and may be withdrawn by the Group Leader or Deputy Leader or Leader of the Council. Once the notice has been delivered the member who has been substituted shall not vote at the relevant meeting (or on the relevant item if the variation has only related to one or more specified items) even if the substitute member does not attend.

B2.3 Where a meeting of a Council committee or sub-committee would otherwise be inquorate an elected member may be substituted by any other elected member for one or more items on the agenda for the meeting (including any item raised under “Urgent Items”) without prior written notice but with the approval of the person presiding for the item in question.

B3. Quorum (To apply to Cabinet and Overview and Scrutiny)

B3.1 The quorum of a committee or sub-committee meeting shall be as set out in the table below:

Number of members (excluding co-opted members)	Quorum of members (excluding co-opted members but including the person presiding)
3-8	3
9-12	4
13-16	5
17-20	6
21-24	7
25-28	8
28-36	9

B3.2 During any meeting if the Chair counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

B3.3 No committee shall comprise less than three members.

B4. Attendance at Committee Meetings (To apply to Cabinet and Overview and Scrutiny)

B4.1 Any councillor may attend and speak at any meeting of the Council's committees, sub-committees, working parties, review panels, Cabinet, or outside bodies with the agreement of the Chair/outside body, except the Employment Committee where they are not a member, unless those bodies resolve to suspend Standing Order B4.1 in whole or in part; or to speak at Licensing Sub-Committee on Licensing Act 2003 applications where the councillor is required to submit a valid written representation to the Licensing Authority within the prescribed consultation period; or Planning Committee where the councillor is required to register their intention to speak prior to the meeting with the Governance Support Team.

B4.2 Standing Order B4.1, shall not entitle any councillor (even if they are a member of that committee, sub-committee, working party or body) to remain in the room in which a meeting is taking place during the consideration of any matter in which he/she has a pecuniary interest or during the consideration of any matter that is confidential (as defined in Part 5A of the Local Government Act 1972). Nor shall Standing Order B4.1 entitle any councillor to remain in the room in which a meeting is taking place if the person presiding at the meeting (if so recommended by the Monitoring Officer (or his/her representative)) considers that the presence of the councillor might prejudice the interest of the Council, be contrary to any relevant Code or Protocol adopted by the Council, or lead to an allegation of maladministration, impropriety or bias.

B4.3 Under no circumstances shall a councillor attending a meeting under this Standing Order B4.1 be entitled to propose or second motions (or amendments) or vote at the meeting.

B4.4 Standing Order A25 (Members' conduct) shall apply to councillors attending meetings under this Standing Order B4.

B4.5 A member's attendance under Standing Order B4 shall be recorded in the minutes for the meeting concerned. However, it shall be the responsibility of members attending under the Standing Order to ensure that the Governance Support Officer is aware of their attendance so that it can be recorded in the minutes of the meeting.

B5. Rules of Debate (to apply to Cabinet and Overview and Scrutiny)

B5.1 The Chair may request officers to provide members with a briefing on agenda items before they are considered. Questions must only relate to factual elements of the matter under discussion and not draw the officer into the debate of members.

B5.2 Following any presentation, the Chair will invite debate.

B5.3 During debate a proposal may be moved. No speeches may be made after the mover has moved a proposal, explained the purpose of it and until the motion has been seconded.

B5.4 The Chair may require the motion to be written down and handed to him/her before it is discussed. The Chair may also require an amendment to be written down and handed to him/her before it is discussed.

B5.5 An amendment to a motion must be reasonably relevant (in the opinion of the Chair) to the motion and must seek to:

(i) refer the matter to an appropriate body or individual for consideration or reconsideration;

(ii) delete words;

(iii) delete words and add other words; or

(iv) add words,

and an amendment that otherwise complies with this Standing Order shall be valid even if the direct or indirect consequence of the amendment (if carried) would be to negate the motion (except amendments made at Planning Committee).

(b) Only one amendment may be moved and discussed at any one time except that the Chair may permit more than one amendment to be debated at the same time if he/she considers this would facilitate the efficient running of the business and if a majority of members present do not object. No further amendment may be moved until the amendment under discussion has been disposed of. Amendments to motions will be moved at the earliest possible opportunity during the debate.

(c) If an amendment is not carried, other amendments to the original motion may be moved.

(d) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which further amendments may be moved. At the end of the debate, the substantive motion will then be put to the vote.

B5.6 A member may alter a motion which he/she has moved with the consent of the seconder. Only alterations which could be made as an amendment (in accordance with Standing Order B5.5) may be made.

B5.7 A member may withdraw a motion which he/she has moved with the consent of the seconder. No member may speak on the motion after the mover has asked permission to withdraw it unless the seconder refuses consent to withdraw the motion.

B5.8 When a motion is under debate, the following procedural motions may be moved:

(i) to proceed to the next business;

If a motion to proceed to the next business is seconded and the Chair thinks the item has been sufficiently discussed, he/she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

(ii) that the motion/amendment be now put to the vote;

If a motion that the motion/amendment be now put to the vote is seconded and the Chair thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.

(iii) to adjourn a debate;

If a motion to adjourn the debate is seconded and the Chair thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply. If the motion is carried and no timeframe is explicit the discussion will be resumed at the next ordinary meeting of the Council and the member who moved its adjournment shall be entitled to speak first. If the motion to adjourn is lost, a second motion for adjournment may be moved during the same meeting and the Chair thinks a reasonable amount of time has lapsed since the last motion to adjourn.

(iv) to adjourn a meeting;

If a motion to adjourn the meeting is seconded and the Chair shall invite the Chief Executive, Monitoring Officer and Chief Finance Officer to indicate whether there is any other business that they believe should be transacted at that meeting (in accordance with Standing Order A11.2) and it shall be put to the vote without debate and without giving the mover of the original motion the right of reply.

(vii) that the meeting continue beyond four hours in duration;

If a motion that the meeting continue beyond four hours in duration or a motion to adjourn the meeting is moved, the Chair

shall invite the most senior officer present to indicate whether there is any other business that they believe should be transacted at that meeting (in accordance with Standing Order A11.2) and if the motion is then seconded it shall be put to the vote without debate.

(viii) to exclude the public and press in accordance with the Standing Orders in relation to Access to Information; and

If a motion to exclude the press and public in accordance with the Standing Orders in relation to Access to Information is seconded, it shall be put to the vote without debate but the Chair may invite the Chief Executive and/or the Monitoring Officer to advise on the matter.

(ix) in accordance with Standing Order A25 (members' conduct), to not hear further a member or to exclude them from the meeting.

B6. Application of Standing Orders in Relation to Council Meetings to Meetings of Committees and Sub-Committees

B6.1 The following Standing Orders in relation to Council Meetings will apply to committee and sub-committee meetings:

A2.2 (ii) to (iv), (xiii)..... Ordinary Meetings
A3 ..... Extraordinary Meetings
A4 ..... Time, place and arrangement of meeting
A5 ..... Notice of and Summons to Meetings
A8.2 ..... Chair of Meeting
A11 ..... Duration of meeting
A14 ..... Motions which may be moved without Notice and/or during debate
A17 ..... Previous Decisions and Motions
A18 (except A18.5)..... Voting (Standing Order A18.1 shall not apply to meetings of the Civic Committee determining nominations for Honorary Freeman or Honorary Alderman where the vote must be unanimous to recommend to the Council to accept the nomination)
A19 (except A19.2)..... Minutes
A20 ..... Record of attendance
A21 ..... Exclusion of public
A22 ..... Representations in respect of Planning and Licensing Applications
A25 ..... Members' conduct
A26 ..... Disturbance by members of the public
A27 ..... Use of cameras and tape and video recorders
A28 ..... Prohibition of smoking, alcohol and drugs at meetings
A29 ..... Suspension and amendment of Standing Orders
A30 ..... Interpretation

B6.2 In applying these Standing Orders to meetings of committees and sub-committees references to "the Council" shall be deemed to be references to "the committee" (or "the sub-committee", as appropriate) and references to the Chair of the Council

and/or Vice-chair of the Council shall be deemed to be references to the "Chair of the committee/sub-committee" and/or "Vice-chair of the committee/sub-committee.

B7. Application of Standing Orders in Relation to Access to Information to Meetings of Committees and Sub-Committees

B7.1 The following Standing Orders in relation to Access to Information will apply to committee and sub-committee meetings:

E1 ..... Scope
E2 ..... Additional rights to information
E3 ..... Rights to attend meetings
E4 ..... Notices of meeting
E5 ..... Access to agenda and reports before and during a meeting
E6 ..... Supply of copies
E7 ..... Access to information after a decision has been made
E8 ..... Background papers
E9 ..... Summary of public's rights
E10 ..... Exclusion of access by the public to meetings
E11 ..... Exclusion of access by the public to reports
E21 ..... Access to information - members

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Standing Orders – The Cabinet

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C14. Application of Standing Orders in relation to Access to Information to Meetings of the Cabinet and Committees of the Cabinet

C1. Introduction

C1.1 In accordance with Article 6, the Cabinet will comprise the Leader of the Council and at least two but no more than nine councillors appointed to the Cabinet by the Leader of the Council. The terms of office of the Leader of the Council and Cabinet Members are detailed in Article 7.

C1.2 Functions which are the responsibility of the Cabinet may be exercised by the Leader of the Council (where applicable). The Leader of the Council may also delegate authority to exercise those functions to the extent he/she wishes to:

(i) the Cabinet as a whole;

(ii) a committee of the Cabinet (the membership of which will only include members of the Cabinet including the Leader of the Council);

(iii) an individual member of the Cabinet;

(iv) an officer;

(v) an area committee;

(vi) joint arrangements; or

(vii) another local authority.

C2. Record of Delegations of Executive Functions

C2.1 At the Annual Meeting of the Council, the Leader of the Council will present to the Council a written record of all delegations made by him/her for inclusion in the Council's Scheme of Delegation at Part 3 to this Constitution. The document presented by the Leader of the Council must contain the following information in relation to the following year in so far as they relate to executive functions:

(i) the names, addresses and wards of the people appointed to the Cabinet by the Leader of the Council;

(ii) the extent of any authority delegated to those Cabinet members individually, including details of the limitation on their authority;

(iii) the terms of reference and constitution of such Cabinet committees as the Leader of the Council appoints (and the names of the Cabinet members he/she appoints to them), including details of any limitation on their authority;

(iv) the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements (and the names of those Cabinet members appointed to any joint committee for the coming year), including details of any limitations on such delegations; and

(v) the nature and extent of any delegation of executive functions to officers with details of any limitation of that delegation and the title of the officer to whom the delegation is made.

C3. Sub-Delegation of Executive Functions

C3.1 If the Leader of the Council delegates functions to the Cabinet, and unless he/she directs otherwise, the Cabinet may delegate further to a committee of the Cabinet, an officer, an area committee, another local authority, or a joint arrangement.

C3.2 If the Leader of the Council delegates functions to a committee of the Cabinet, and unless he/she directs otherwise, the committee may delegate further to a sub-committee or an officer.

C3.3 Unless the delegating body directs otherwise, where executive functions are delegated to an area committee, that committee may delegate further to an officer.

C3.4 Even where executive functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated the function.

C4. The Council's Scheme of Delegation and Executive Functions

C4.1 The Council's Scheme of Delegation will be adopted by the Council at its Annual Meeting. It will contain the details required in Article 6 and be set out in Part 3 of this Constitution.

C4.2 During the year, amendments to the scheme of delegation in relation to executive functions may be effected as follows:

(a) The Leader of the Council may amend the Scheme of Delegation of executive functions at any time during the year. To do so, the Leader of the Council must give written notice to the proper officer and report these changes to the next ordinary meeting of the Council. Where the Leader of the Council wants to withdraw or amend delegations to a committee, notice will be served on that committee when it has been served on its Chair.

(b) The notice to the proper officer must set out the amendment to the Scheme of Delegation, as contained in Part 3 of this Constitution, and whether it entails the withdrawal of delegation from any person, body, committee or the Cabinet as a whole. The amendment will take effect on service of the notice by the Leader of the Council on the proper officer.

C5. Chair of the Cabinet

C5.1 The Leader of the Council will preside at any meeting of the Cabinet or its committees at which he/she is present, unless he/she appoints another person to do so. In the absence of the Leader of the Council, the Deputy Leader shall preside if they are present unless he/she appoints another person to do so (or the Leader of the Council has appointed another person to preside). In the absence of both the Leader of the Council and Deputy Leader, the Cabinet will elect a Chair unless the Leader of the Council has appointed another person to do so.

C6. Meetings of the Cabinet

C6.1 The frequency, times and locations to be determined by the Leader of the Council.

C6.2 The Chief Executive may call other meetings of the Cabinet throughout the Municipal Year, in consultation with the Leader of the Council.

C6.3 All meetings of the Cabinet will be convened in accordance with the Standing Orders in relation to Access to Information.

C6.4 The quorum for a meeting of the Cabinet, or a committee of it, shall be three.

C6.5 The order of business at meetings of the Cabinet will be:

(i) to elect a Chair for the meeting, if the Leader of the Council and Deputy Leader (if appointed) are absent, subject to C5.1 above;

(ii) to approve and sign as a correct record the minutes of the previous meeting;

(iii) to receive any declarations of interest;

(iv) to deal with any urgent business being dealt with in accordance with the Standing Orders in relation to Access to Information;

(v) to consider matters referred to the Cabinet (whether by the Overview and Scrutiny Board or any of its sub-committees or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Standing Orders in relation to Overview and Scrutiny or the Standing Orders in relation to the Budget and Policy Framework;

(vi) to consider any reports from the Overview and Scrutiny Board or its sub-committees;

(vii) to consider any other matters set out in the agenda for the meeting (which shall indicate which are key decisions and which are not in accordance with the Standing Orders in relation to Access to Information); and

(viii) to consider motions in accordance with A13 and C9.

C6.6 The Head of Governance Support will prepare each agenda for the Cabinet meetings in consultation with the Leader of the Council.

C6.7 The Head of Governance Support will ensure that an item is placed on the agenda of the next available meeting of the Cabinet if the Overview and Scrutiny Board (or any of its sub-committees) or the Council has resolved that an item must be considered by the Cabinet.

C6.8 Any member of the Council may ask the Leader of the Council to put an item on the agenda for a Cabinet meeting for consideration. If the Leader of the Council agrees, the item will be considered at the next available meeting of the Cabinet. The notice of the meeting will give the name of the councillor who asked for the item to be considered and that councillor will be invited to attend the meeting.

C6.9 The Monitoring Officer and/or the Chief Finance Officer may include an item for consideration on the agenda of a Cabinet meeting and may require the proper officer to call such a meeting in pursuance of their statutory duties.

C6.10 Where a notice of motion has been submitted to the Cabinet for consideration, the Member who submitted the motion shall be entitled to address the Cabinet on such motion.

C6.11 In other circumstances, where the Head of the Paid Service, Chief Finance Officer or Monitoring Officer are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision, they may include an item on the agenda of a Cabinet meeting. If there is no such meeting of the Cabinet within an appropriate timescale to deal with the issue in question, then they may also require that a meeting be convened at which the matter will be considered.

C7. Attendance at Cabinet Meetings

C7.1 Meetings of the Cabinet shall be held in public unless exempt or confidential information is likely to be discussed in accordance with the Standing Orders in relation to Access to Information.

C7.2 Any councillor may attend and speak at any meeting of the Cabinet and any meeting of any committee of the Cabinet subject to Standing Order B4.

C8. Cabinet Decisions

C8.1 All reports to the Cabinet from the Overview and Scrutiny Board (or any of its sub-committees) on proposals relating to the budget and policy framework must contain details of consultation with stakeholders. The level of consultation required will be appropriate to the matter under consideration.

C8.2 Reports about other matters will set out the details and outcome of consultation as appropriate.

C8.3 Decisions taken by the Leader of the Council (where applicable), individual members of the Cabinet, the Cabinet or a committee of the Cabinet will have due regard to legal, financial and professional officer advice. The advice of the Monitoring Officer will be sought if there is doubt about the legality of the proposed decision.

C8.4 Where Cabinet decisions are made by the Leader of the Council or delegated to a committee of the Cabinet or an individual member of the Cabinet, the rules applying to Cabinet decisions taken by them shall be the same as those applying to those taken by the Cabinet as a whole.

C8.5 Cabinet decisions (including key decisions taken by officers) are subject to a call-in mechanism as set out in the Standing Orders in relation to Overview and Scrutiny.

C9. Procedure for Notice of Motion at Cabinet meetings

C9.1 Motions that are within the remit of the Cabinet will be considered and either determined at a meeting of the Cabinet, or the Cabinet may refer the matter to an individual member of the Cabinet (where individual Cabinet Member decision making arrangements are in place) or to an officer for consideration in consultation with the relevant Cabinet Member and the promoter and supporter of the motion.

C9.2 Motions for which notice has been given and require a Cabinet decision will be listed on the agenda in the order in which notice was received, unless the promoter and supporter giving notice state, in writing (including by e-mail if verified by the Head of Governance Support), that they propose to move it to a later meeting or withdraw it. The Leader of the Council may alter the order in which Notices of Motion are taken

on the agenda if he/she considers this will facilitate the efficient running of the meeting.

C9.3 At the meeting, the Notice of Motion promoter and supporter will be asked to present the motion as published on the Cabinet agenda. The promoter and supporter speeches will be limited to 5 minutes each.

C9.4 Upon conclusion of the promoter and supporter speeches, a Cabinet Member will propose and second the Cabinet's response to the Notice of Motion. The Cabinet's response will then be open for debate in accordance with Standing Order A15.

C10. Conflicts of Interest

C10.1 Where the Leader of the Council has a conflict of interest this shall be dealt with as set out in the Council's Code of Conduct for Members and Schedule 5 – Delegation of Executive Functions in Part 5 and Part 3 of this Constitution respectively.

C10.2 If every member of the Cabinet has a conflict of interest this shall be dealt with as set out in the Council's Code of Conduct for Members and Schedule 5 – Delegation of Executive Functions as set out in Part 5 and Part 3 of this Constitution respectively.

C10.3 If the exercise of an executive function has been delegated to a committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, which means that the committee, individual member or officer cannot exercise the function, then the function will be exercised by the person or body by whom the delegation was made and that person or body may delegate such function to another committee, individual member or officer.

C11. Record of Cabinet Decisions

C11.1 A record of any Cabinet decisions taken by the Leader of the Council, an individual member of the Cabinet, the Cabinet or a committee of the Cabinet will be prepared in accordance with the Standing Orders in relation to Access to Information.

C12. Cabinet Working Parties

C12.1 The Leader of the Council may appoint (on a task-and-finish basis) informal working parties in accordance with the Local Protocol on Working Parties.

C13. Referral of Matters to the Overview and Scrutiny Bodies

C13.1 The Leader of the Council, individual members of the Cabinet, the Cabinet and Cabinet committees may refer matters related to any executive functions to the Overview and Scrutiny Board with a request that the Board consider the matter and report back with recommendations. Such requests will be dealt with in accordance with the Standing Orders in relation to Overview and Scrutiny.

C14. Application of Standing Orders in Relation to Council Meetings to Meetings of the Cabinet and Committees of the Cabinet

C14.1 The following Standing Orders in relation to Council Meetings will apply to meetings of the Cabinet and Cabinet committees:

A4 ..... Time, place and arrangement of meeting

A5 ..... Notice of and Summons to Meetings
A11 ..... Duration of meeting
A14 ..... Motions which may be moved without Notice and/or during debate
A18 (except A18.5)..... Voting
A19 (except A19.2)..... Minutes
A20 ..... Record of attendance
A21 ..... Exclusion of public
A24 ..... Public Question Time, with the exception that public questions will be presented on a monthly basis at Cabinet meetings.
A25 ..... Members' conduct
A26 ..... Disturbance by members of the public
A27 ..... Use of cameras and tape and video recorders
A28 ..... Prohibition of smoking, alcohol and drugs at meetings
A29 ..... Suspension and amendment of Standing Orders
A30 ..... Interpretation

C14.2 In applying these Standing Orders to meetings of the Cabinet and Cabinet committees, references to the Council shall be deemed to be references to the Cabinet and references to the Civic Mayor and/or Deputy Civic Mayor shall be deemed to be references to the Leader of the Council and/or Deputy Leader.

C14.3 The following Standing Orders in relation to Committee and Sub-Committee Meetings will apply to meetings of the Cabinet and Cabinet sub-committees:

B2 ..... Appointment of Substitute Members of Committees and Sub-Committees
B3 ..... Quorum
B4 ..... Attendance at committee meetings
B5. ..... Rules of Debate

C14.4 So far as the above mentioned Standing Orders in relation to Council meetings are inconsistent with these Standing Orders in relation to the Cabinet and Cabinet committees, the latter shall prevail.

C15. Application of Standing Orders in relation to Access to Information to Meetings of the Cabinet and Committees of the Cabinet

C15.1 The following Standing Orders in relation to Access to Information will apply to meetings of the Cabinet and Cabinet committees:

E1. ..... Scope
E2. ..... Additional rights to information
E3. ..... Rights to attend meetings
E4. ..... Notices of meeting
E5. ..... Access to agenda and reports before and during a meeting
E6. ..... Supply of copies
E7. ..... Access to information after a decision has been made
E8. ..... Background papers
E9. ..... Summary of public's rights
E10. ..... Exclusion of access by the public to meetings
E11. ..... Exclusion of access by the public to reports
E12. ..... Procedure before taking Key Decisions

E13. ..... The Forward Plan
E14. ..... General exception
E15. ..... Special urgency
E16. ..... Reports to Council
E17. ..... Record of decisions
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E19. ..... Recording of Decisions by the Elected Mayor or individual members of the Cabinet taken outside of meetings
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Standing Orders – Overview and Scrutiny

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D1. Introduction

D1.1 The Council will appoint overview and scrutiny committees in accordance with Article 5.

D1.2 The committees may appoint sub-committees. The committees and their sub-committees may appoint working parties.

D2. Membership

D2.1 The Leader of the Council, members of the Cabinet and the Civic Mayor may not be members of the overview and scrutiny committees, their sub-committees or any working parties appointed by the committees or their sub-committees. All other councillors will be eligible to be appointed to the overview and scrutiny committees, their sub-committees or any working parties appointed by the committees or their sub-committees. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

D2.2 The composition of the overview and scrutiny committees is set out in Part 3 of this Constitution.

D2.3 In accordance with the Local Government and Housing Act 1989, each of the overview and scrutiny committees (and any of their sub-committees) must reflect the political balance of the local authority (unless the Council (or the committees, as applicable) agree(s) otherwise with no member voting against).

D3. Co-opted Members with Voting Rights

D3.1 The Overview and Scrutiny Board and any sub-committee it appoints that deals with education matters will include in their membership the following representatives with voting rights:

(i) one Church of England diocese representative;

(ii) one Roman Catholic diocese representative; and

(iii) two parent governor representatives.

D3.2 When and if Board or sub-committee dealing with education matters also deals with other matters, those representatives shall not vote on those other matters, although they may stay in the meeting and speak. Agendas for these meetings will indicate which matters those representatives may vote on.

D3.3 Any working party appointed by the Board or its sub-committee to deal with mainly education matters (in the opinion of the Overview and Scrutiny Manager will include in its membership the representatives indicated in Standing Order D3.1).

D3.4 The Church of England and Roman Catholic dioceses may appoint substitute members to attend meetings of the Board and any sub-committee and overview and scrutiny working party if the nominated representatives are unable to attend.

D4. Co-opted Members with No Voting Rights

D4.1 Any of the overview and scrutiny committees may recommend to the Council the appointment of non-voting co-opted members.

D4.2 Any overview and scrutiny sub-committee or working party may recommend to the parent committee, the appointment of non-voting co-opted members.

D5. Chair

D5.1 Each overview and scrutiny committee, sub-committee and working party will elect a Chair for the Municipal Year from the members (including any church and parent governor representatives) sitting on that body.

D5.2 Each committee and sub-committee will consider appointing a Vice-chair. If a church or parent governor representative is elected as Chair, a Vice-chair will be appointed and shall be an elected member of the committee or the sub-committee.

D5.3 If a church or parent governor representative is elected as Chair of the committee or sub-committee and a non-education matter comes before the committee or sub-committee, the Vice-chair will take the chair. If there is no Vice-chair or if the Vice-chair is not present or is unable to act, the committee or sub-committee will appoint a Chair for that item. This provision is to allow the Chair a casting vote if necessary.

D6. Meetings of the Overview and Scrutiny Bodies

D6.1 The order of business at the overview and scrutiny committees will be:

(i) to elect a person to preside at the meeting, if the Chair and Vice-chair is absent;

(ii) to approve and sign as a correct record the minutes of the previous meeting;

(iii) to receive any declarations of interest;

(iv) to deal with any urgent business dealt with in accordance with the Standing Orders in relation to Access to Information;

(v) to deal with any matters which are subject to the call-in mechanism;

(vi) to consider responses of the Leader of the Council and/or Cabinet to reports of that overview and scrutiny committee; and

(vii) to deal with any other matters set out on the agenda for the meeting.

D7. Reports from Overview and Scrutiny Bodies

D7.1 Subject to Standing Order D7.2, following each investigation, review or call-in a report will be prepared for consideration by the Leader of the Council or the Cabinet, as appropriate (when the recommendations relate to an executive function and the proposals are consistent with the existing Budget and Policy Framework), or the Council (when the recommendations relate to a Council function or if the proposals would require a departure from or a change to the agreed Budget and Policy Framework). Reports of the overview and scrutiny committees and their sub-committees will be public documents.

D7.2 In the case of reports prepared in relation to health services or crime and disorder matters and related to a relevant partner authority the report will be forwarded to the relevant NHS body or partner authority without reference to the Leader of the Council, the Cabinet or the Council.

D7.3 Reports prepared by any overview and scrutiny working party following a review or investigation will be considered in the first instance by the parent overview and scrutiny committee or sub-committee as appropriate. The committee or sub-committee may adopt the report (with or without amendment) and once adopted, the proposals will be classed as proposals of the relevant committee or sub-committee. The report will then be dealt with in accordance with Standing Orders D7.1 and D7.2.

D7.4 The body or individual to which a report has been referred will, in writing, be required to:

(i) consider the report and recommendations

(ii) respond to the overview and scrutiny committee or sub-committee indicating what (if any) action the body or individual proposed to take

(iii) publish the response

(iv) provide the member who referred the matter to the overview and scrutiny body under section 21A of the Local Government and Local Involvement in Health Act 2007 ("Councillor Call for Action") (if applicable) with a copy of the response.

It is the duty of the body or individual to undertake these actions within two months beginning with the date on which the body or individual received the report or recommendations or (if later) the notice.

D8. Production of Work Programme

D8.1 The Overview and Scrutiny Board will, early in each Municipal Year, co-ordinate the production of a work programme for all of the overview and scrutiny bodies for that year. The Board will keep that programme under review during the course of the year. The work programme will be devised having regard to the resources available, time constraints of members and officers and the interests of the local community.

D8.2 The views of all non-Cabinet members will be taken into account when agreeing the Work Programme including the views of the members who are not members of the largest political group on the Council and of the co-opted members. Cabinet Members, Directors and Divisional Directors will also be consulted on which issues to include within the Work Programme.

D8.3 In determining which matters to review, regard will be given to sources such as the Council's Corporate Plan, the Forward Plan and reports from any other relevant persons or bodies.

D8.4 The work programme must be flexible enough to take account of changing circumstances throughout the Municipal Year. This flexibility will also allow for those recently implemented decisions of the Leader of the Council (where applicable) and the Cabinet to be monitored and scrutinised.

D9. THE "CALL-IN" MECHANISM

D9.1 Subject to Standing Order D9.6, Standing Order D10 and Standing Order D11, any five members of the Council may request, in writing and within five clear working days of the publication of a decision (Note: this does not include recommendations made to other bodies for decision e.g. Council) made by the Leader of the Council, the Cabinet, another individual member of the Cabinet or a committee of the Cabinet (as appropriate) or a Key Decision made by an officer under delegated authority from the Cabinet, the proper officer to "call-in" that decision for scrutiny by the appropriate overview and scrutiny committee. The member whose name (in the opinion of the Overview and Scrutiny Manager) appears first on the Notice of Call-in shall be known as the Call-in Promoter and the other members who have signed the Notice of Call-in shall be known as the Call-in Supporters. Where a matter relates to education, one of the five signatories to a call-in request may be a church or parent governor representative. No other co-opted member may be entitled to sign a call-in notice. Any request for call-in shall set out the reason/s for that request and shall be invalid if no reason is given. Any request for call-in may be withdrawn in accordance with Standing Order D12 below.

D9.2 On receipt of a written request for a decision to be called-in, the proper officer (in consultation with the Chair) will call a meeting of the appropriate overview and scrutiny committee to be held within ten working days of receipt of the request (excluding the day of receipt and the day of the meeting). The Call-in Promoter and at least two of the Call-in Supporters shall attend the relevant meeting of the committee (and may be asked to speak on the matter and/or be questioned by members of the committee). With the prior approval of the Overview and Scrutiny Co-ordinator or appropriate Scrutiny Lead Member, a Call-in Supporter may attend in place of the Call-in Promoter. If the Call-in Promoter (or substitute approved in accordance with this Standing Order) and two Call-in Supporters do not all attend the meeting of the committee the call-in request shall be deemed to be withdrawn unless the committee resolves otherwise on a majority vote. The Overview and Scrutiny Co-ordinator or appropriate Scrutiny Lead Member and/or the appropriate overview and scrutiny committee may also require any one or more of the other Call-in Supporters to attend the relevant meeting of the Board and be questioned about the Notice of Call-in and their reasons for supporting it.

D9.3 If, for whatever reason, a valid meeting of the appropriate overview and scrutiny committee (including any adjourned meeting) is not held within ten working days, the decision will take effect on the expiry of those ten working days unless (in the opinion of the Monitoring Officer) the decision is outside the Budget and Policy Framework.

D9.4 Having considered the decision, the appropriate overview and scrutiny committee has a number of options open to it:

Option		Subsequent Action
A.	Take no further action.	The original decision will take effect from the date of the meeting of the committee.

Option		Subsequent Action
B.	Refer the decision back to the decision maker for reconsideration, setting out in writing the nature of the committee's concerns.	Within a further ten working days, the decision maker will resolve to either: (i) confirm the decision without modification; or (ii) confirm the decision with modification; or (iii) rescind the decision. If the decision maker does none of the above within ten working days, the decision shall be deemed to have been rescinded.
C.	In exceptional circumstances, refer the matter to the Council for scrutiny, giving reasons for why the matter is being referred to Council.	Upon such request, the proper officer shall arrange a meeting of the Council within 20 working days (excluding the day of receipt or the day of the meeting) or as soon thereafter, as is reasonably practicable, unless: (i) a normal Council meeting is scheduled within 30 working days (excluding the day of receipt or the day of the meeting) in which case the matter shall be referred to that meeting; or (ii) if a normal Council meeting is not scheduled within 30 working days and the decision-maker confirms to the proper officer that he/she is content for the matter to be referred to the next normal Council meeting. **At the Council meeting, if the Council does not object to the decision**, no further action is necessary and the decision will be effective from the date of the Council meeting. **Provided the decision has been made in accordance with the Policy Framework and the Budget**, the Council has no power to amend the decision but may refer any decision to which it objects back to the decision maker together with the Council's views on that decision and the Subsequent Action referred to in Option B shall

Option	Subsequent Action
	apply.

D9.5 In each of the options set out in 9.4 above, the decision maker may only be asked to re-consider a matter once.

D9.6 Subject to Standing Order D10 below, decisions taken by officers will only be subject to call-in if they are Key Decisions (as defined in Article 11).

D9.7 Where a matter is called-in under this Standing Order D9 no further action will be taken in respect of the decision or its implementation save in accordance with this Standing Order or (if appropriate) Standing Order D10.

D9.8 None of the call-in procedures apply to the budget setting process which operates its own procedures and prescribed timetable.

D9.9 The operation of the provisions relating to call-in shall be monitored annually and a report submitted to Council with proposals for review if necessary.

D10. Call-In of Decisions That May Be Outside the Budget or Policy Framework

D10.1 Where a matter is called-in under Standing Order D9.1 above and the appropriate overview and scrutiny committee considers that the decision is or (if implemented) would be contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Council's Budget, then it shall seek advice from the Monitoring Officer and/or the Chief Finance Officer.

D10.2 If the advice of the officer/s consulted is that the matter is not contrary to the Budget and Policy Framework (and this is accepted by a majority of the committee) then no further action will be taken under this Standing Order D10, but the matter may still be dealt with under Standing Order D9.4.

D10.3 If the advice of the officer(s) consulted is that the decision is contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Budget (or if a majority of the committee is still of that view despite contrary advice from the officer/s consulted) the committee shall refer the matter to Council. If the decision has already been implemented the committee shall determine the remedial action it considers necessary and make recommendations to the Council accordingly.

D10.4 If a matter is referred to Council under Standing Order D10.3 an officer's report (setting out the views of the appropriate overview and scrutiny committee and any advice by the Monitoring Officer and/or Chief Financial Officer) shall be sent to the Leader of the Council and every member of the Cabinet and a copy sent to every other member of the Council. The Leader of the Council or Cabinet (as appropriate) shall then consider the officer's report and publish a Record of Decision with his/her response in advance of the Council meeting.

D10.5 Where a matter is referred to Council under this Standing Order D10, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.

D10.6 Where a matter is referred to Council under this Standing Order D10 the Council shall first determine whether or not the decision (if implemented) would be within the Budget and Policy Framework.

D10.7 If the Council determines that the decision would be within the Framework the Subsequent Action it may take are as per Option C of D9.4.

D10.8 If the Council determines that the decision would be contrary to (or not wholly in accordance with) the Budget and/or Policy Framework, the decision shall be deemed as a recommendation to the Council and the Council itself shall take the final decision on the matter.

D11. CALL-IN AND URGENCY

D11.1 The call-in procedure set out above shall not apply where the executive decision being taken is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public, shall state whether (in the opinion of the decision-making person or body) the decision is an urgent one, and therefore not subject to call-in.

D11.2 Before deciding whether a decision is urgent, the decision-making person or body shall consult with the Overview and Scrutiny Co-ordinator or (if he/she cannot be reasonably contacted) then:

(a) (if the decision is a Key Decision and Standing Order E14 (General Exception) applies) each member of the Overview and Scrutiny Board shall be consulted; or

(b) (in all other cases) the Civic Mayor, or (if there is no Civic Mayor appointed) the Deputy Civic Mayor, shall be consulted.

D11.3 Decisions taken as a matter of urgency shall be reported to the next available meeting of the Council, together with the reasons for urgency and a summary of the consultation undertaken under Standing Order D11.2.

D12. Withdrawal of a Call-In Notice

D12.1 A call-in notice may be withdrawn at any time before it is considered by the appropriate overview and scrutiny board if a majority of the first five members (including any co-opted member) whose names appear on the call-in notice give notice in writing (including by e-mail) to the proper officer that they wish their name to be removed from the call-in notice.

D12.2 Once notice to the proper officer under Standing Order D12.1 above has been lodged it may not be withdrawn.

D13. Members' Right to Include Items on Agendas and the Councillor Call for Action

D13.1 The Leader of the Council and any councillor (whether or not a member of any overview and scrutiny committee) may give written notice (including by e-mail) to the proper officer that he/she wishes an item relevant to the functions of an overview and scrutiny committee or any of their sub-committees to be considered at a meeting of that body. On receipt of such request, the proper officer will ensure that it is included

on the next available agenda and the item shall be discussed by the appropriate committee or sub-committee with a view to determining whether to request officers to prepare a full report on the matter for submission to a future meeting of that body.

D13.2 Any co-opted member may give written notice (including by email) to the proper officer that he/she wishes an item relevant to the functions of the overview and scrutiny committee or sub-committee on which they sit to be considered at a meeting of that body. On receipt of such request, the proper officer will ensure that it is included on the next available agenda and the item shall be discussed by the committee or sub-committee with a view to determining whether to request officers to prepare a full report on the matter for submission to a future meeting of that body.

D13.3 The overview and scrutiny bodies will have regard to the Local Government and Public Involvement in Health Act 2007, any Regulations and any guidance in considering those items referred to in D13.2.

D14. Attendance by Other Members of the Council, Officers and Other Persons at Meetings of Overview and Scrutiny Bodies

D14.1 Each overview and scrutiny committee (and their sub-committees) may require the Leader of the Council, any other member(s) of the Cabinet and (subject to Standing Order D14.2) officers of the Council to appear before it to explain (in relation to all aspects of the committee's (or sub-committee's) work):

(i) any particular decision or series of decisions;

(ii) the extent to which the actions taken implement Council policy; and/or

(iii) their performance

and it is the duty of those persons to attend if so required, unless they have a legitimate reason for not doing so.

D14.2 The only officers who may be called to appear will be Heads of Service or above (or officers holding posts designated by the appropriate Director or Divisional Director or other officers who have given advice to members). No other officer shall be called unless the Monitoring Officer (in consultation with the Chair and relevant Director or Divisional Director) agrees otherwise.

D14.3 Where any member or officer is required to attend an overview and scrutiny committee or any of their sub-committees, the Chair of the committee or sub-committee will inform the proper officer. The proper officer shall inform the member or officer in writing (including by e-mail) normally giving at least three working days notice of the meeting which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee or the sub-committee. Where the account to be given to the committee or the sub-committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for the preparation of that documentation (in the opinion of the proper officer).

D14.4 Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the committee or the sub-committee may resolve to adjourn the meeting for the item(s) concerned, and in consultation with the member or

officer, arrange an alternative date for attendance (to take place normally within a maximum of ten working days from the date of the meeting).

D14.5 Subject to Standing Orders D14.3 and D14.4, where the Overview and Scrutiny Board or the Health Scrutiny Board (if appointed) (or one of their sub-committees) is considering a matter in relation to health services in Torbay, the Board or its sub-committee may require an officer of the appropriate NHS trust or body to attend its meeting to explain any particular decision or series of decisions. It is the duty of those persons to attend if so required, unless they have a legitimate reason for not doing so.

D14.6 Each overview and scrutiny committee (and their sub-committees) may also invite any other person(s) to attend its meetings (but the committee (or its sub-committees) cannot require them to do so). Working parties may only invite (and not require) persons (including members and officers) to attend its meetings. In undertaking its work, the overview and scrutiny committees, their sub-committees and any working parties may seek the views of as many communities and interested parties as the body considers necessary to gain a balanced view.

D14.7 When the Leader of the Council, members, officers or other individuals attend overview and scrutiny meetings, the Chair will explain the purpose of their attendance at the meeting. Questions will be directed through the Chair who will determine whether they are relevant or if they are repetitive. Those persons attending the meeting will be treated with respect and courtesy and will be given every opportunity to respond. Members will have regard to the European Convention on Human Rights.

D14.8 When officers attend meetings of any overview and scrutiny committee, their sub-committees and any working party under these provisions, members' questions may only relate to matters of fact and explanation relating to Cabinet and Council policies and decisions. Officers may be asked to explain, as far as they are able:

(i) what the policies are;

(ii) the justification and objectives of those policies as the officer believes the Leader of the Council, the Cabinet or the Council sees them;

(iii) the extent to which those objectives may have been met; and

(iv) how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

D14.9 Each committee, their sub-committees and any working parties must bear in mind that officers are employed to give professional advice and shall not be drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the Leader of the Council's, the Cabinet's or the Council's policies and actions shall always be consistent with the requirement for officers to be politically impartial.

D15. Application of Standing Orders in Relation to Council Meetings to Overview and Scrutiny Meetings

D15.1 The following Standing Orders in relation to Council Meetings will apply to meetings of all overview and scrutiny committees and their sub-committees:

A2.2 (ii) to (iv), (xiii)..... Ordinary Meetings
A3 ..... Extraordinary Meetings
A4 ..... Time, place and arrangement of meeting
A5 ..... Notice of and Summons to Meetings
A8.2 ..... Chair of Meeting
A11 ..... Duration of meeting
A14 ..... Motions which may be moved without Notice and/or during debate
A17 ..... Previous Decisions and Motions
A18 (except A18.5)..... Voting (Standing Order A18.1 shall not apply to meetings of the Civic Committee determining nominations for Honorary Freeman or Honorary Alderman where the vote must be unanimous to recommend to the Council to accept the nomination)
A19 (except A19.2)..... Minutes
A20 ..... Record of attendance
A21 ..... Exclusion of public
A25 ..... Members' conduct
A26 ..... Disturbance by members of the public
A27 ..... Use of cameras and tape and video recorders
A28 ..... Prohibition of smoking, alcohol and drugs at meetings
A29 ..... Suspension and amendment of Standing Orders
A30 ..... Interpretation

D15.2 In applying these Standing Orders to meetings of overview and scrutiny bodies references to the Council shall be deemed to be references to overview and scrutiny bodies and references to the Civic Mayor and/or Deputy Civic Mayor shall be deemed to be reference to the Chair and/or Vice-chair (if appointed) of the overview and scrutiny bodies.

D15.3 The following Standing Orders in relation to Committee and Sub-Committee Meetings will apply to meetings of each overview and scrutiny committee and their sub-committees:

B1 ..... Election of Chair
B2 ..... Appointment of Substitute Members of Committees and Sub-Committees
B3 ..... Quorum
B4 ..... Attendance at Committee Meetings
B5 ..... Rules of Debate

D15.4 So far as the above mentioned Standing Orders in relation to Council Meetings are inconsistent with these Standing Orders in relation to Overview and Scrutiny, the latter shall prevail.

D16. Application of Standing Orders in Relation to Access to Information to Meetings of Overview and Scrutiny Meetings

D16.1 The following Standing Orders in relation to Access to Information will apply to meetings of all overview and scrutiny committees and their sub-committees:

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E2 ..... Additional rights to information
E3 ..... Rights to attend meetings
E4 ..... Notices of meeting
E5 ..... Access to agenda and reports before and during a meeting
E6 ..... Supply of copies
E7 ..... Access to information after a decision has been made
E8 ..... Background papers
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Standing Orders – Access to Information

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E1. Scope

E1.1 Standing Orders E1 to E11 and E20 (of these Standing Orders in relation to Access to Information) apply to all meetings of the Council, Boards, Council committees and sub-committees and to meetings of the Cabinet and its committees.

E1.2 Standing Orders E12 to E18 (of these Standing Orders in relation to Access to Information) apply the Cabinet only (and in relation to associated documents).

E2. Additional Rights to Information

E2.1 These Standing Orders do not affect any more specific rights to information contained elsewhere in this Constitution or the law. Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e. in connection with the proper performance of the Member's Council duties.

E3. Rights to Attend Meetings

E3.1 Members of the public may attend all meetings of the Council, Council committees and sub-committees and the Cabinet and its committees subject only to the exceptions set out elsewhere in these Standing Orders.

E4. Notices of Meeting

E4.1 The Council will normally give at least five clear working days notice of any meeting by posting details of the meeting at the Town Hall, Torquay. Details of all these meetings will also be available on the Council's website (www.torbay.gov.uk). In exceptional circumstances and where it is not possible to give five clear working days notice, the details of the meeting will be publicised on the date that the meeting is arranged at the Town Hall, Torquay and on the Council's website.

E4.2 The Head of Governance Support, following consultation with the relevant Chair or the Civic Mayor where it is not possible to consult the relevant Chair, may alter the date of or cancel a meeting.

E5. Access to Agenda and Reports Before and During a Meeting

E5.1 Subject to Standing Orders E10 and E11, the Council will make copies of agendas and reports open to the public and available for inspection on the Council's website and at the Town Hall, Torquay and other Council offices by prior arrangement, at least five clear working days before the meeting, or if the meeting is arranged on less than five clear working days notice on the date the meeting is arranged, but nothing in this Standing Order requires copies of any agenda item, or report to be open to inspection by the public until copies are available to the decision-maker and/or members of the Council.

E5.2 Each member of the Council will be sent by electronic means, or in paper form where they have requested, agenda and reports for meetings of committees to which they have been appointed. Exempt and confidential reports will be provided to non-committee members in accordance with Standing Order E20, if requested on a 'need to know' basis.

E5.3 If an item is added to the agenda later, a revised agenda and any associated reports will be sent by electronic means, or in paper form where they have requested, to relevant councillors and made available for inspection by the public as soon as it is published.

E5.4 A reasonable number of copies of the agenda and reports to be considered at a meeting will be made available for the use of the public at that meeting.

E6. Supply of Copies

E6.1 Subject to Standing Orders E10 and E11, the Council will supply copies of:

(i) any agenda and reports that are open to public inspection;

(ii) any further documents necessary to indicate the nature of the items on the agenda; and

(iii) if the proper officer thinks fit, any other documents supplied to councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

E7. Access to information after a decision has been made

E7.1 The Council will make available copies of the following for six years after a decision is made:

(i) the minutes of the meeting and/or any record of decisions taken, in accordance with Standing Order E17;

(ii) a summary of any proceedings when the meeting was not open to the public or where exempt or confidential information was disclosed;

(iii) the agenda for the meeting; and

(iv) reports that were considered when the meeting was open to the public.

This Standing Order shall also apply to decisions taken by the Leader of the Council or individual members of the Cabinet (where applicable) and Cabinet decisions taken by officers.

E8. Background Papers

E8.1 At the end of each report, the report author will set out a list of those documents (called background papers) which, in his/her opinion:

(i) disclose any facts relating to matters on which the report or an important part of the report is based; and

(ii) have been relied on to a material extent in the preparation of the report,

but will not include published works or those which disclose exempt or confidential information (as defined in Standing Order E10) or, in respect of any Cabinet reports, the advice of a political advisor.

E8.2 The Council will make available for public inspection for six years after the date of the meeting one copy of each of the documents on the list of background papers and these will also be available on the Council's website.

E8.3 Standing Orders E8.1 and E8.2 shall also apply to Cabinet decisions taken by the Leader of the Cabinet, individual members of the Cabinet and officers.

E9. Summary of Public's Rights

E9.1 A summary of the public's rights to attend meetings and to inspect and copy documents is set out in the Summary, Explanation and Interpretation at the beginning of the Constitution.

E10. Exclusion of Access by the Public to Meetings

E10.1 The public **must** be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that **confidential information** would be disclosed.

E10.2 Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order or any Act.

E10.3 The public **may** be excluded from meetings upon the passing of a resolution whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that **exempt information** would be disclosed. The public may also be excluded from meetings where in the reasonable opinion the Chair it is necessary to exclude them in order to maintain orderly conduct or prevent misbehaviour at a meeting.

E10.4 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6 of that Act.

E10.5 Exempt information means information defined in Schedule 12A of the Local Government Act 1972 (as amended (SI 2006/88) which falls within the following 7 categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information within paragraph 1 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Category	Condition
2. Information which is likely to reveal the identity of an individual.	Information within paragraph 2 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Information within paragraph 3 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. However, information under paragraph 3 is not exempt information if it must be registered under: (a) the Companies Acts (1985 and 2006); (b) the Friendly Societies Acts 1974 and 1992; (c) the Industrial and Provident Societies Act 1965 to 1978; (d) the Building Societies Act 1986; or (e) the Charities Act 1993.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	Information within paragraph 4 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information within paragraph 5 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Category	Condition
6. Information which reveals that the Council proposes: (a) to give, under any enactment, a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.	Information within paragraph 6 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	Information within paragraph 7 is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

E10.6 Information falling within any of paragraphs 1-7 above is not exempt if it relates to proposed development for which the Council can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

E10.7 Where an Cabinet decision is to be made at a private meeting of the Cabinet or its committees, the decision-making body must publish a notice, including the reasons for the meeting to be held in private, at least 28 clear days before the meeting at the Town Hall, Torquay and on the Council's website. At least five clear days before a private meeting of the Cabinet or its committees, the decision-making body will publish a further notice including the reasons for the meeting to be held in private, details of any representations received about why the meeting should be open to the public and a statement responding to such representations.

E10.8 Where the date by which a meeting must be held makes compliance with Standing Order E10.7 impracticable, the meeting may only be held in private where the decision-making body has obtained agreement from:

(i) the Chair of the relevant Overview and Scrutiny Committee; or

(ii) if the Chair of the relevant Overview and Scrutiny Committee is unable to act, the Civic Mayor or the Deputy Civic Mayor if the Civic Mayor is unable to act

that the meeting is urgent and cannot be reasonably deferred.

As soon as reasonably practicable after the decision-making body has obtained agreement to hold a private meeting it must publish a notice including the reasons why the meeting is urgent and cannot reasonably be deferred at the Town Hall, Torquay and on the Council's website.

E11. Exclusion of Access by the Public to Reports

E11.1 If the proper officer thinks fit, the Council may exclude access by the public to reports or parts of reports that, in his/her opinion, relate to items during which (in accordance with Standing Order E10) a meeting is likely not to be open to the public. Such reports or parts of reports will be marked "Restricted and Not for publication" together with an explanation of the reasons why the author of the report considers that the report or parts of the report should be considered with the press and public excluded.

E12. Procedure Before Taking Key Decisions

E12.1 Subject to Standing Order E14 (general exception) and Standing Order E15 (special urgency) in relation to Cabinet key decisions, a Key Decision may not be taken unless:

(i) the matter in question has been entered into and published in a Forward Plan;

(ii) at least twenty eight clear days in the case of an Cabinet key decision have elapsed since the entry in the Forward Plan has been available for inspection by the public in accordance with Standing Order E13.1; and

(iii) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Standing Order E4 (notice of meetings).

(A Key Decision is defined in Article 11.03 of this Constitution.)

E13. The Forward Plan

E13.1 A Forward Plan will be prepared on behalf of the Cabinet and entries will be published as soon as reasonably practicable once made or substantially amended. The Forward Plan will be available for inspection by the public at the Town Hall, Torquay and on the Council's website (www.torbay.gov.uk).

E13.2 The Forward Plan will contain matters which the Leader of the Council has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, area committees or under joint arrangements in the course of the discharge of an executive function. The Forward Plan will also include all decisions to be taken by the Council, any Council Committee or Sub-Committee or any officer that would, if they were an Cabinet decision, be regarded as a key decision. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

(i) that a key decision is to be made;

(ii) the matter in respect of which a decision is to be made;

(iii) where the decision taker is an individual, his/her name and title (if any) or where the decision taker is a body, its name and details of membership;

(iv) the date on which, or the period within which, the decision will be taken;

(v) a list of the documents submitted to the decision-maker for consideration in relation the matter in respect of which the key decision is to be made;

(vi) the address from which any documents can be obtained, subject to any prohibition or restriction on their disclosure; and

(vii) that other documents relevant to decision may be submitted to the decision-maker and the procedure for requesting details of those documents as and when they become available.

In addition to the above, the Forward Plan may include:

(i) the identity of the principal groups that the decision taker proposes to consult before taking the decision;

(ii) the means by which any such consultation is proposed to be undertaken; and

(iii) the steps any person might take if they wish to make representations to the decision taker about the matter on which the decision is to be made and the date by which those steps must be taken.

E13.3 Exempt information need not be included in a Forward Plan and confidential information cannot be included.

E14. General Exception

E14.1 Where the matter is likely to be a Key Decision and it has not been practicable to include it in the Forward Plan then the decision may still be taken if all of the following apply:

(i) the decision must be taken by a specified date and it is therefore impracticable to defer the decision to allow for 28 clear days notice in respect of Cabinet key decisions;

(ii) in respect of Cabinet key decisions, the Proper Officer has informed the Chair of the relevant Overview and Scrutiny Committee or if he/she cannot reasonably be contacted each member of the relevant Overview and Scrutiny Committee, by written notice, of the matter about which the decision is being made, together with the reasons why Standing Order E13 can not be complied with; or

(iii) the proper officer has made copies of that notice available to the public at the offices of the Council and on the Council's website; and

(iv) at least five clear working days have elapsed since the proper officer complied with (iii).

E14.2 If the provisions of Standing Order E14.1 cannot be met, the provisions of Standing Order E15 (special urgency) will apply.

E14.3 Where such a decision is taken at a meeting of the Cabinet, that meeting must be held in public.

E15. Special Urgency

E15.1 In respect of Cabinet key decisions, where the date by which a key decision must be made, makes compliance with Standing Orders E13 and/or E14 impracticable, the decision may only be made where the decision-maker has obtained agreement from:

(i) the Chair of the relevant Overview and Scrutiny Committee; or

(ii) if the Chair of the relevant Overview and Scrutiny Committee is unable to act, the Civic Mayor or the Deputy Civic Mayor if the Civic Mayor is unable to act.

E15.2 As soon as reasonably practicable, after the decision-maker has obtained agreement under Standing Order E15.1, the decision-maker must make available a notice to the public at the offices of the Council and on the Council's website, setting out the reasons that the decision is urgent and why it could not be deferred;

E15.3 The Leader of the Council will submit reports to the next appropriate Council meeting summarising the decision of the Cabinet taken in accordance with Standing Order E15.1 in the preceding three months. The report submitted must include:

(i) particulars of each decision made; and

(ii) a summary of the matters in respect each decision was made.

E16. Reports to Council

E16.1 If the Overview and Scrutiny Board thinks that a Cabinet Key Decision has been taken which was not:

(i) included in the Forward Plan; or

(ii) the subject of the general exception procedure (Standing Order E14); or

(iii) the subject of an agreement with the Overview and Scrutiny Co-ordinator, the relevant scrutiny lead member or the Civic Mayor or the Deputy Civic Mayor under Standing Order E15;

(iv) the Overview and Scrutiny Board may require the Cabinet to submit a report to the Council within such reasonable time as the Board specifies. The power to require a report rests with the Board, but it is also delegated to the proper officer, who shall require such a report on behalf of the Board when so requested in writing by any five members.

E16.2 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of the receipt of the written notice or the resolution of the Board, then the report may be submitted to the meeting after that. The report to the Council will set out the particulars of the decision, the decision taker and, if the Leader of the Council is of the opinion that it was not a Key Decision, the reasons for that opinion.

E17. Record of Decisions

E17.1 After any meeting of the Cabinet (or any of its committees) or Council meeting where the Leader of the Council (where applicable) makes an executive decision, the

proper officer or, where no officer was present the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record of decision will include:

(i) details of the decision maker;

(ii) details of the decision including the date it was made;

(iii) the reason for the decision;

(iv) background information;

(v) alternative options considered and rejected at the time of the decision;

(vi) whether the decision is a Key Decision;

(vii) whether the call-in procedure applies;

(viii) any declarations of interest and, if applicable, a note of any dispensation granted;

(ix) the published date; and

(x) the anticipated implementation date.

E17.2 Where a Key Decision is taken without consideration of a duly completed report in the Council's usual format, the record of that decision shall, within the section entitled "background information" explain how and why the decision was reached and include the key risks relating to the decision and any relevant financial, legal or equalities implications.

E17.3 When a decision is made by the Leader of the Council or a member of his/her Cabinet (where applicable), the decision shall be published as soon as reasonably practicable on the Council's website. All councillors will be sent electronic copies of the records of all such decisions by the person responsible for publishing the decision.

E17.4 The notice of the decision will bear the date on which it is published and will specify that the decision will come into force and may be implemented on the expiry of five clear working days after the publication of the decision unless the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

E18. Reports intended to be taken into account

E18.1 Where the Leader of the Council or an individual member of the Cabinet receives a report which he/she intends to take into account in making any decision (where applicable), then he/she will not make the decision until at least five clear days after receipt of the report. On the giving of such a report to an individual decision maker, the proper officer will give a copy of it to the Chair of the Overview and Scrutiny Board and make it publicly available at the same time.

E19. Executive Decisions by Officers

E19.1 As soon as reasonably practicable after an officer has made an Executive decision, the officer must produce a written statement which must include:-

(i) details of the decision including the date it was made;

(iii) the reason for the decision;

(v) alternative options considered and rejected at the time of the decision;

(viii) a record of any conflict of interest declared by any cabinet member who is consulted by the officer which relates to the decision; and

(viii) in respect of any declared conflict of interest of the officer making the decision, a note of dispensation granted by the Monitoring Officer.

and this written statement will be available for inspection in accordance with E17.3.

E19.2 The provisions of Standing Orders E7 and E8 (inspection of documents after meetings) will also apply to the making of Cabinet decisions by officers. This does not require the disclosure of exempt or confidential information.

E20. Access to Information – Members

E20.1 All members will be entitled to receive reports and associated documents submitted to the Leader of the Council, individual members of the Cabinet, the Cabinet, committees of the Cabinet, officers, the Overview and Scrutiny Board or other committees, unless those reports and/or associated documents contain confidential and exempt information (where disclosure is not in the public interest), and

(i) in the case of confidential information, disclosure would be contrary to a court order or government guidance; or

(ii) a member has (in the reasonable opinion of the Monitoring Officer) a pecuniary interest in the subject matter of the report; or

(iii) the report contains the advice of a political assistant.

E20.2 Members have a prima facie right to inspect Council documents so far as access to the documents is reasonably necessary to enable the Member to properly perform their duties as a member of the Council.

E20.3 The Member must set out their intention and objective for requesting the document. A Member does not have a right to a 'roving commission' to examine Council documents. Where there is a refusal by a Head of Service which holds the document in question, the Monitoring Officer will determine if the document shall be released.

E20.4 Members of Overview and Scrutiny are entitled to request documents which relate to their work (as identified in their work programme or in respect of reviews they are undertaking) and/or in accordance with the Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. Such requests must set out the intention and objective for requesting the document

and be made via governance.support@torbay.gov.uk so that the support officer(s) can obtain the required documentation and provide the same within ten working days. If there is dispute, the Monitoring Officer shall determine if the request reasonably relates to the Overview and Scrutiny work programme/review and/or in accordance with the Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

E20.5 When dealing with casework, the Member will seek written consent from the individual to access their personal data held by the Council. Where it is not possible to obtain written consent and the relevant service manager considers explicit consent from the individual is necessary due to sensitive personal data being disclosed, the Member will email the service manager with confirmation that they have spoken to the individual who has provided their explicit consent. Members, as individual Data Controllers will be responsible for ensuring that they have obtained the necessary consent. Alternatively or where explicit consent is not given, the casework will be handed over to the service department concerned without any personal data being released to the Member.

E21. **Freedom of Information Act 2000**

E21.1 So far as there is any conflict between these Standing Orders and the Freedom of Information Act 2000 the latter shall prevail.

E22. Outside Bodies Reporting Protocol

E22.1 The Council appoints Members to represent Torbay Council on a number of outside organisations. Representative Members are required to report on the activities of the outside organisation, the impact of those activities on the local community and Council service delivery, in order to keep the Council informed. Reports from Members on outside organisations will also allow the Council and evaluate the value and benefits of its continued membership. Members will not disclose any information that is confidential to that organisation.

E22.2 The Overview and Scrutiny Board will determine a programme for receiving Reports from Representative Members on outside bodies as part of its annual Work Planning. Where possible, Reports will be submitted following the annual meeting of the body, unless exceptional circumstances require a further report. Reports will be prepared by the Representative Member(s) so not to draw on officer resource and be submitted in writing to governance.support@torbay.gov.uk using the prescribed form (attached at Appendix 1 to these Standing Orders), and so far as is reasonably practicable, limited to two sides of A4. Reports will be considered by the Overview and Scrutiny Board to enable it to make recommendations to the Council or Cabinet, as appropriate.

E22.3 Where the Council nominates more than one Representative Member to an outside organisation, a Lead Representative Member will be nominated to be responsible for co-ordinating the Report to the Council (this can include a joint report by all members on the outside body being prepared). If an organisation does not have an annual meeting, then the Council's Lead Representative Member will report in the third quarter of the year so that the Council can consider the benefits of retaining its representation.

Appendix 1

Outside Bodies - Member Reporting Form

Name of Organisation:

Elected Member:

Objectives of Organisation:

Role and responsibility of the Council representative? (For example, Observer, Trustee, Director):

What have you achieved through the relationship?

How often does the organisation meet?

How often have you attended meetings?

Have you been provided with any training to support your role? If yes, please give details.

What at key issues have arisen?

What is the performance against their key performance indicators and what action is being taken to address any red or amber performance?

What are the key risks for the organisation and what is being done to mitigate the risks?

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Standing Orders – Budget and Policy Framework

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F7. Virements and general limitations on expenditure

F8. Reviews/amendments to existing Policy Framework documents

F1. The Framework for Executive Decisions

F1.1 The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once the budget and policy framework is in place, it will be the responsibility of the Cabinet to implement it.

F2. Process for Developing the Revenue Budget

F2.1 Normally, at least four months before the Council's budget meeting, the Cabinet will publicise, by including in the Forward Plan, a timetable in accordance with which it will make proposals for the authority's overall financial approach to service expenditure levels and local taxation for the next following year and publish initial proposals for the budget, having taken into account any budget formulation work carried out by the Overview and Scrutiny Board and any issues raised during any State of the Borough debate.

F2.2 The Cabinet's initial budget proposals will then be sent to the all the members of the Overview and Scrutiny Board for consideration and to all appropriate external consultees. Details of the consultation process shall be included in the Forward Plan and the consultation period shall normally be not less than six weeks.

F2.3 If the Overview and Scrutiny Board wishes to respond to the Cabinet during the consultation process then it may do so. As the Overview and Scrutiny Board has responsibility for fixing its own work programme, it is open to the Overview and Scrutiny Board to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from the Overview and Scrutiny Board into account in drawing up it's budget proposals.

F2.4 In addition, the Cabinet may seek informal discussions with the Overview and Scrutiny Board to debate any areas of difference.

F2.5 At the end of the consultation period the Cabinet will finalise it's budget proposals (subject to receipt at a later date of any relevant information from the Government and/or any precepting authorities) having due regard to the responses to the consultation and submit them to the Council for consideration at a meeting normally commencing prior to 8th February in each year. The Cabinet's budget report to Council will explain how the Cabinet has taken into account any recommendations from the Overview and Scrutiny Board and other consultation responses.

F2.6 At the Council budget setting meeting, the Council will consider the Cabinet's budget proposals. In reaching a decision on the Cabinet's budget proposals the Council may:

(i) adopt the Cabinet's proposals without amendment; or

(ii) follow the process set out in Standing Orders F2.7 to F2.11 below, where it has objections to it.

F2.7 Subject to Standing Order F2.11, where, before 8th February in any financial year, the Cabinet submits to a meeting of the Council for its consideration in relation to the following financial year:

(i) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49 of the Local Government Finance Act 1992;

(ii) estimates of other amounts to be used for the purposes of such a calculation;

(iii) estimates of such a calculation; or

(iv) amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992

and following consideration of those estimates or amounts the Council has any objection, it must take the action set out in Standing Order F2.8.

F2.8 Before the Council makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in Standing Order F2.7(i), or issues a precept under Chapter IV of Part I of the Local Government Finance Act 1992, it must inform the Leader of the Council of any objections which it has to the Cabinet's estimates or amounts and must give to him/her instructions requiring the Cabinet to reconsider, in the light of those objections, those estimates and amounts in accordance with the Council's requirements.

(Note: The provisions in Standing Order A13.4 in relation to Council meetings apply for Motions affecting the setting of the Budget.)

F2.9 Where the Council gives instructions in accordance with Standing Order F2.8, it must specify a period of at least five working days beginning on the day after the date on which the Leader of the Council receives the instructions on behalf of the Cabinet within which the Leader of the Council may:

(i) submit a revision of the estimates or amounts as amended by the Cabinet ("revised estimates or amounts"), which have been reconsidered in accordance with the Council's requirements, with the Cabinet's reasons for any amendments made to the estimates or amounts, to the Council for its consideration; or

(ii) inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.

F2.10 When the period specified by the Council referred to in Standing Order F2.9 has expired, the Council must, when making calculations (whether originally or by way of substitute) in accordance with sections 32 to 37 or 43 to 49 of the Local Government Finance Act 1992, or when issuing a precept under Chapter IV of Part I of the Local Government Finance Act 1992, take into account:

(i) any amendments proposed by the Cabinet to the estimates or amounts included in any revised estimates or amounts;

(ii) the Cabinet's reasons for those amendments;

(iii) any disagreement that the Cabinet has with any of the Council's objections; and

(iv) the Cabinet's reasons for that disagreement,

which the Cabinet submitted to the Council, or informed the Council of, within the period specified by Standing Order F2.9 above.

F2.11 Standing Orders F2.7 to F2.10 shall not apply in relation to:

(i) calculations or substitute calculations which the Council is required to make in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992; and

(ii) amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of the Local Government Finance Act 1992.

(Standing Orders F2.7 to F2.11 reflect the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001)

F2.12 Where the papers containing the Cabinet's budget proposals to be submitted under Standing Order F2.5 are submitted to a meeting of Council prior to 8th February, that meeting shall be adjourned (or further adjourned) for such a reasonable period (including having regard to Standing Order A13.4 in relation to Council Meetings) as the Chief Executive shall recommend where:

(i) a majority of members present and voting so determine; or

(ii) (without a vote) where the Chief Finance Officer has advised that an adjournment is reasonably necessary to allow time for the receipt (or consideration by him/her and/or members) of additional information or full consideration (by him/her and/or members) of the papers submitted to Council

and Standing Orders F2.7 to F2.11 (inclusive) shall continue to apply notwithstanding such adjournment.

F2.13 Subject to Standing Order F2.12, Standing Orders F2.7 to F2.11 shall not apply when the Cabinet submits its proposals to the Council after 7th February in any financial year.

F2.14 Any notices of motion in respect of the proposed budget will be served in accordance with the Standing Order A13.4.

F2.15 Given the statutory deadline for setting council tax levels, a decision on the budget to be set shall be taken (and shall not be referred to an adjourned meeting or to a future meeting) where the Council's Chief Finance Officer (in consultation with the Monitoring Officer and Chief Executive) advises that a failure to set a budget would be likely to be illegal.

F2.16 The Overview and Scrutiny Co-ordinator and scrutiny lead members will be given notice of and shall be entitled to attend all meetings of the Cabinet when annual estimates are under consideration.

F2.17 In approving the budget, the Council may also specify the extent of any budget transfer (or virement) limits in accordance with Financial Regulations. Any other changes to the budget are reserved to the Council.

F2.18 In approving the budget, the Council will also set the fees and charges for the forthcoming year.

F2.19 The Cabinet shall submit a recommendation to the appropriate Council meeting, as to the setting of the Council Tax Base as per the Local Authorities (Calculation of Tax base)(England) Regulations 2012,

F2.20 The Cabinet, after taking into consideration those statutory matters to be taken into account in relation to the Collection Fund (including the amounts required under precepts served by precepting authorities), shall submit a recommendation to the appropriate Council meeting as to those matters and the amount of the levels of Council Tax to be set for each category of dwelling for its area for the chargeable financial year commencing on 1st April.

F3. Process for Developing the Capital Plan

F3.1 Each year the Corporate Asset Management Team (CAMT), in collaboration with the Chief Executive, other Directors, Divisional Directors and Heads of Service, will prepare revisions to the Capital Plan (including any proposed changes to the approved disposals list) covering all capital expenditure in the forthcoming four-year period for consideration by the Cabinet. In considering any new schemes for inclusion within the Capital Plan, the CAMT will utilise any capital prioritisation process approved by the Council ensuring that the projected expenditure over the life of the project, including on-going revenue consequences, is taken into account.

F3.2 Normally, at least two months before the Council's budget meeting and following the annual announcement of the Government's allocation of capital resources (through the Single Capital Pot or successor arrangements), the Cabinet will publish in the Forward Plan a timetable for making proposals to the Council for revisions to the Capital Plan.

F3.3 The Cabinet's initial proposals for revisions to the Capital Plan will then be sent to the all the members of the Overview and Scrutiny Board for consideration and to all appropriate external consultees. Details of the consultation process shall be included in the Forward Plan and the consultation period shall normally be not less than six weeks.

F3.4 If the Overview and Scrutiny Board wishes to respond to the Cabinet during the consultation process then it may do so. As the Overview and Scrutiny Board has responsibility for fixing its own work programme, it is open to the Overview and Scrutiny Board to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from the Overview and Scrutiny Board into account in drawing up it'sbudget proposals.

F3.5 In addition, the Leader of the Council may seek informal discussions with the Overview and Scrutiny Board to debate any areas of difference.

F3.6 At the end of that period, the Cabinet will finalise it'sproposals for revision to the Capital Plan having regard to the responses to the consultation and submit them to the Council for consideration. The Cabinet's report to Council will explain how the Cabinet has taken into account any recommendations from the Overview and Scrutiny Board and other consultation responses.

F3.7 In reaching a decision on the Cabinet's proposals the Council may:

(i) adopt the Cabinet's proposals without amendment, in which case the Council may make a decision with immediate effect; or

(ii) follow the process set out in Standing Orders F3.8 to F3.10 below, where it has objections to it.

F3.8 Before the Council:

(i) amends the draft Capital Plan; or

(ii) adopts (with or without modification) the Capital Plan,

it must inform the Leader of the Council of any objections which it has to the draft Capital Plan and must give him/her instructions requiring the Cabinet to reconsider, in light of those objections, the draft Capital Plan submitted to it.

F3.9 Where the Council gives instructions in accordance with Standing Order F3.8, it must specify a period of at least five working days beginning on the day after the date on which the Leader of the Council receives the instructions within which the Cabinet may:

(i) submit a revision of the draft Capital Plan as amended by the Cabinet (the "revised draft Capital Plan"), with the Cabinet's reasons for any amendments made to the draft Capital Plan, to the Council for its consideration; or

(ii) inform the Council of any disagreement that the Cabinet has with any of the Council's objections and his or her reasons for any such disagreement.

F3.10 When the period specified by the Council referred to in Standing Order F3.9 has expired, the Council must, when:

(i) amending the draft Capital Plan or, if there is one, the revised draft Capital Plan; or

(ii) adopting (with or without modifications) the Capital Plan,

take into account any amendments made to the draft Capital Plan that are included in any revised draft Capital Plan, the Cabinet's reasons for those amendments, any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for that disagreement, which the Leader of the Council submitted to the Council, or informed the Council of, within the period specified.

(Standing Orders F3.7 to F3.10 reflect the requirements of the Local Authorities (Standing Orders) (England) Regulations 2001)

F3.11 The procedures referred to in Standing Orders F3.7 to F3.10 shall be undertaken concurrently with the process for developing the revenue budget.

F4. Process for Developing the Policy Framework

F4.1 Before a plan within the Policy Framework is adopted or subject to Standing Order F8, the Cabinet shall publish a timetable in accordance within which it will make proposals to the Council. Details of any proposed consultation exercise shall be included in the Forward Plan and the consultation period shall normally be not less than six weeks. The form and nature of any consultation to be undertaken may be discussed between the Cabinet and the Overview and Scrutiny Board to ensure its effectiveness. Any representations made to the Cabinet will be taken into account in formulating the initial proposals.

F4.2 If the matter is one where an Overview and Scrutiny Board has carried out a review of policy, then the outcome of that review will be reported to the Cabinet and considered in the preparation of initial proposals.

F4.3 The Cabinet's initial proposals will then be sent to all members of the Overview and Scrutiny Board for further consideration and to all appropriate external consultees. The Overview and Scrutiny Co-ordinator (or his/her nominee), on behalf of the Overview and Scrutiny Board, will then indicate if he/she is content for the proposals to be submitted to the Council without any formal consideration or response from the Overview and Scrutiny Board. He/she will inform the Head of Governance Support, the Leader of the Council and other Group Leaders where he/she decides that a formal response will not be given.

F4.4 If the Overview and Scrutiny Board wishes to respond to the Cabinet during the consultation process then it may do so. As the Overview and Scrutiny Board has responsibility for fixing its own work programme, it is open to the Overview and Scrutiny Board to investigate, research or report in detail with policy recommendations before the end of the consultation period. The Cabinet will take any response from the Overview and Scrutiny Board into account in drawing up it's proposals.

F4.5 In addition, the Leader of the Council may seek informal discussions with the Overview and Scrutiny Board to debate any areas of difference.

F4.6 At the end of that period, the Cabinet will finalise it's proposals having regard to the responses to the consultation and submit them to the Council for consideration. The Cabinet's report to Council will explain how it has taken into account any recommendations from the Overview and Scrutiny Board and other consultation responses.

F4.7 The Council will consider the Cabinet's proposals. In reaching a decision on the Cabinet's proposals the Council may:

(i) adopt the Cabinet's proposals without amendment, in which case the Council may make a decision with immediate effect; or

(ii) follow the process set out in Standing Orders F4.8 to F4.10 below, where it has objections to it.

F4.8 Before the Council:

(i) amends the draft plan or strategy;

(ii) approves, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his/her approval, any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; or

(iii) adopts (with or without modification) the plan or strategy, it must inform the Leader of the Council of any objections which it has to the draft plan or strategy and must give him/her instructions requiring the Cabinet to reconsider, in light of those objections, the draft plan or strategy submitted to it.

F4.9 Where the Council gives instructions in accordance with Standing Order F4.8, it must specify a period of at least five working days beginning on the day after the date on

which the Leader of the Council receives the instructions within which the Leader of the Council may:

(i) submit a revision of the draft plan or strategy as amended by the Cabinet (the "revised draft plan or strategy"), with the Cabinet's reasons for any amendments made to the draft plan or strategy, to the Council for its consideration; or

(ii) inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.

F4.10 When the period specified by the Council referred to in Standing Order F4.9 has expired, the Council must, when:

(i) amending the draft plan or strategy or, if there is one, the revised draft plan or strategy; or

(ii) approving, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his/her approval, any plan or strategy (whether or not in the form of a draft or revised draft) of which any part is required to be so submitted; or

(iii) adopting (with or without modifications) the plan or strategy,

take into account any amendments made to the draft plan or strategy that are included in any revised draft plan or strategy, the Cabinet's reasons for those amendments, any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for that disagreement, which the Leader of the Council submitted to the Council, or informed the Council of, within the period specified.

F4.11 The process for dealing with a proposed addition to or amendment to a Policy Framework document may, however, be varied where the Leader of the Council and/or Overview and Scrutiny Co-ordinator (or their respective deputies or nominees) have confirmed in writing (including via email) to the Head of Governance that they are in agreement to the variations to the process.

F4.12 Subject to Standing Order F8, any changes to the Policy Framework are reserved to the Council.

F5. Decisions outside the Budget or Policy Framework

F5.1 Subject to the provisions of Financial Regulations in relation to virement, the Leader of the Council, the Cabinet (including committees of the Cabinet), individual members of the Cabinet and any officers, area committees or joint arrangements discharging Cabinet functions may only take decisions that are in line with the Budget and Policy Framework. If any of these bodies or persons wishes to make a decision that is contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Budget approved by the Council, then (subject to Standing Order F6 (Urgent decisions outside the Budget or Policy Framework)) that decision may only be taken by the Council.

F5.2 If the Cabinet (including committees of the Cabinet), the Leader of the Council, individual members of the Cabinet and any officers, area committees or joint arrangements discharging executive functions consider (or if they are asked by the Chief Executive or his/her deputy to consider) that a decision might be contrary to

Policy Framework or contrary to (or not wholly in accordance with) the Budget, they shall take advice from the Monitoring Officer and/or the Chief Finance Officer as appropriate. If the advice of either of those officers is that the decision would not be in line with the existing Budget and/or Policy Framework (with officers giving clear reasons for this advice), then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Standing Order F6 (Urgent decisions outside the Budget or Policy Framework) shall apply.

F6. Urgent Decisions outside the Budget or Policy Framework

F6.1 The Cabinet (including a committee of the Cabinet), the Leader of the Council, an individual member of the Cabinet or officers, area committees or joint arrangements discharging executive functions may take a decision that is contrary to the Council's Policy Framework or contrary to (or not wholly in accordance with) the Budget approved by Council if the circumstances which render necessary the making of the decision may reasonably be regarded as urgent. However, such a decision may only be taken:

(i) if (in the opinion of the Chief Executive) it is not reasonably practical to convene a quorate meeting of the Council in sufficient time; and

(ii) if the person or body making the decision has obtained a statement in writing (confirming that the decision needs to be taken as a matter of urgency) from the Overview and Scrutiny Co-ordinator (as determined by the Chief Executive) or, if the Overview and Scrutiny Co-ordinator is unable to act, from the Civic Mayor or, in the absence of both, from the Deputy Civic Mayor.

F6.2 The reasons why it is not practical to convene a quorate meeting of the Council and the consent of the relevant member to the decision being taken as a matter of urgency must be noted on the record of the decision.

F6.3 As soon as reasonably practicable after the decision, the decision taker will submit a report to a meeting of the Council. This report must include details of the decision; the emergency or other circumstances in which it was made; and the reasons for the decision.

In Standing Order F6.1, references to the Chief Executive mean:

(i) in the absence of the Chief Executive (or if the decision in question is to be taken by the Chief Executive), his/her deputy; and

(ii) in the absence of both the Chief Executive and his/her deputy (or if one of them is absent and the other is to take the decision in question) the Monitoring Officer, or Deputy Monitoring Officer, as appropriate.

F7. Virements and General Limitations on Expenditure

F7.1 General limitations as to expenditure against Budgets and arrangements for virements and are set out in the Council's Financial Regulations.

F8. Reviews/Amendments to Existing Policy Framework Documents

F8.1 Where a Policy Framework document has been approved by the Council it will be kept under review by the relevant Director/Divisional Director/Head of Service. The relevant Director/Divisional Director/Head of Service may amend a Policy Framework

document, following consultation with the Leader of the Council, relevant member and the group leaders (or their nominees), in order to ensure that the document:

(i) reflects any subsequent budget or policy decision made by the Council; or
(ii) complies with the law or ministerial direction; or
(iii) follows best practice or is in the interest of local people.

F8.2 Where the Council wishes to amend an existing Policy Framework document, a Notice of Motion objecting to the existing Policy Framework document shall be submitted (in accordance with Standing Order A14) and Standing Orders F4.8 to F4.11 shall be followed.

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

"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.

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Standing Orders – Health and Wellbeing Board

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H11 Application of the Code of Conduct for Members to the Health and Wellbeing Board

Interpretation

In applying these Standing Orders to meetings of the Health and Wellbeing Board and its sub-committees references to "members" refers to all members of the Health and Wellbeing Board irrespective whether they are elected councillors or not.

H1. Introduction

H1.1 The Council will appoint a Health and Wellbeing Board in accordance with Article 15.

H1.2 The Board may appoint sub-committees. The Board and its sub-committees may appoint working groups.

H2. Membership

H2.1 The composition of the Health and Wellbeing Board is set out in Part 3 of this Constitution.

H2.2 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 disapply Sections 15 and 16 of the Local Government and Housing Act 1989. Therefore, the membership of the Health and Wellbeing Board does not need to reflect the political balance of the local authority.

H3. Chair

H3.1 The Annual Council meeting will elect/appoint a Chair and Vice-Chair of the Health and Wellbeing Board for each Municipal Year from its members and voting co-opted members.

H3.2 In the absence of the Chair (and Vice-Chair, if appointed) at any meeting, a Chair for that meeting shall be elected.

H3.3 The person presiding at any meeting of the Board may exercise any power or duty of the Chair.

H4. Order of Business

H4.1 The order of business at meetings of the Health and Wellbeing Board will be:

(i) To elect a person to preside at the meeting, if the Chair and Vice-Chair is absent.

(ii) To deal with any business required by statute to be dealt with before any other business.

(iii) To approve as a correct record the minutes of the last meeting of the Board.

(iv) To receive any declarations of interest from the members of the Board.

(v) To deal with any business from the last meeting.

H4.2 Business falling under items (i), (ii) or (iii) in Standing Order 4.1 shall not be displaced although the remaining order of business may be varied by the Chair.
(This Standing Order may not be suspended)

H5. Voting

H5.1 Decisions at the Health and Wellbeing Board will be reached by consensus where possible.

H5.2 However, in the event that consensus cannot be reached, each member of the Board will have a single vote.

H5.3 If there are equal numbers of votes for and against, the Chair (if he/she is a member of the Board and whether or not he/she has voted) will have a casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

If the Chair of the Board is a co-opted member, the Vice-chair (whether or not he/she has voted) will have the casting vote. There will be no restriction on how the Vice-chair chooses to exercise a casting vote.

(Standing Order H5.3 may not be suspended – Schedule 12 and Section 4 of the Local Government Act 1972)

H5.4 Standing Orders A18.1 and A18.3 – A18.6 in relation to Council Meetings also applies to meetings of the Health and Wellbeing Board.

H6. Substitutions and Permanent Changes in Membership

H6.1 All members of the Board are asked to make every effort to attend meetings of the Board. This will provide consistency and thus effectiveness. However, it is acknowledged that in some circumstances members may not be able to attend and therefore the following standing orders apply in making substitutions.

H6.2 Substitutions of elected members are permitted subject to the requirement of Standing Order B2 in relation to Committee and Sub-committee Meetings.

H6.3 Substitutions of other members of the Board is permitted provided notice of the variation has been delivered to the Head of Governance Support before the commencement of the meeting or adjourned meeting. Substitutes should be of a sufficiently senior level to act on behalf of the permanent member.

H6.4 Substitutes shall be counted when determining whether a meeting is quorate.

H6.5 The Leader of the Council, the Clinical Commissioning Group, Healthwatch Torbay and the NHS Commissioning Board may change their representatives on the Board at any stage providing that written notification is supplied to the Head of Governance Support.

H7. Quorum

(The quorum is the minimum number of members necessary to conduct the business of the Board)

H7.1 A meeting of the Health and Wellbeing Board will be not be quorate unless at least four members of the Board are present.

H8. Attendance at Board meetings

H8.1 Any councillor may attend and speak at any meeting of the Health and Wellbeing Board, its sub-committees or working groups where they are not a member, unless those bodies resolve to suspend Standing Order H8.1 in whole or in part.

H8.2 The Health and Wellbeing Board (and its sub-committees or working groups) may invite any person(s) to attend and speak at its meetings (but the Health and Wellbeing Board (or its sub-committees) cannot require them to attend). In undertaking its work, the Health and Wellbeing Board, its sub-committees or working groups may seek the views of as many communities and interested parties as the body considers necessary to gain a balanced view

H8.3 For the avoidance of doubt Standing Order H8.1, shall not entitle any councillor (even if they are a member of that committee or sub-committee) to remain in the room during the consideration of any matter in relation to which he/she has a disclosable pecuniary interest as defined in the Code of Conduct for Members.

H8.4 Under no circumstances shall a councillor attending a meeting under this Standing Order H8.1 be entitled to propose or second motions (or amendments) or vote at the meeting.

H8.5 Standing Order A25 (Members' conduct) shall apply to councillors attending meetings under this Standing Order H8.

H8.6 A member's attendance under Standing Order H8 shall be recorded by the Clerk at the meeting. The official attendance record will be held in the minutes of the meeting.

H9. Application of Standing Orders in relation to Council Meetings to meetings of the Health and Wellbeing Board

H9.1 The following Standing Orders in relation to Council Meetings will apply to meetings of the Health and Wellbeing Board:

A3 ..... Extraordinary Meetings
A4 ..... Time, place and arrangement of meeting
A11 ..... Duration of meeting
A14 ..... Motions without notice
A18 ..... Voting
A19 (except A19.2)..... Minutes
A20 ..... Record of attendance
A21 ..... Exclusion of public
A25.2-A25.6..... Members' conduct
A26 ..... Disturbance by members of the public
A27 ..... Use of cameras and tape and video recorders
A28 ..... Prohibition of smoking, alcohol and drugs at meetings
A29 ..... Suspension and amendment of Standing Orders
A30 ..... Interpretation

H9.2 In applying these Standing Orders to meetings of the Health and Wellbeing Board and its sub-committees references to "the Council" shall be deemed to be references to "the Board" (or "the sub-committee", as appropriate) and references to the Chair of the Council and/or Vice-chair of the Council shall be deemed to be references to the "Chair of the Board/sub-committee" and/or "Vice-chair of the Board/sub-committee.

H10. Application of Standing Orders in relation to Access to Information to meetings of the Health and Wellbeing Board

H10.1 The following Standing Orders in relation to Access to Information will apply to meetings of the Health and Wellbeing Board:

E1 ..... Scope
E2 ..... Additional rights to information
E3 ..... Rights to attend meetings
E4 ..... Notices of meeting
E5 ..... Access to agenda and reports before and during a meeting
E6 ..... Supply of copies
E7 ..... Access to information after a decision has been made
E8 ..... Background papers
E9 ..... Summary of public's rights
E10 ..... Exclusion of access by the public to meetings
E11 ..... Exclusion of access by the public to reports
E21 ..... Access to information – members

H11. Application of the Code of Conduct for Members to the Health and Wellbeing Board

H11.1 The Code of Conduct for Members applies to all members of the Health and Wellbeing Board.

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Standing Orders – Remote/Hybrid Meetings

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I1 Introduction

I1.1 These Remote/Hybrid Meetings Standing Orders have been developed in line with the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, which expired on 7 May 2021, to respond to the Covid-19 pandemic and ensure essential business continues whilst upholding democratic principles and protecting the health and safety of Councillors, officers and the public, in line with Public Health guidance.

I2 Scope and Application

I2.1 These Remote/Hybrid Meetings Standing Orders apply to all meetings of the Council, Cabinet, Boards, Committees and Sub-Committees that are to be held from 7 May 2021 until 21 June 2021 or such other date as the Government's social distancing requirements are lifted.

Accordingly, all Standing Orders are to be read subject to these Remote/Hybrid Meetings Standing Orders, including:

(a) Council Meetings
(b) Committees and Sub-Committees
(c) Cabinet
(d) Overview and Scrutiny
(e) Access to Information
(f) Health and Wellbeing

I3. Interpretation

I3.1 Reference to the 2020 Regulations are to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 and the words "remote access" and "remote attendance", had the meaning given to them by the former 2020 Regulations, namely:

> Remote access of public and press to a local authority meeting to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming; and
>
> A Councillor in remote attendance attends the meeting at any time if all of the conditions are satisfied:
> (a) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Councillors in attendance;
> (b) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
> (c) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.

I3.2 Decision makers and key officers will attend remote/hybrid meetings in person, normally at the Town Hall, Torquay with all other interested parties including other Councillors, officers, members of the public and registered speakers, encouraged to attend the meetings remotely via Zoom, to ensure that the least number of attendees are present to and meet the requirements of the Council's Covid-19 Security/Safety Risk Assessment.

I4. **Time and access to meetings**

I4.1 Meetings will be held at the time notified on the agenda and include arrangements for obtaining access via electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers, as well as the physical location for members of the committee/board etc.

I5. **Attendance and Remote Connection**

I5.1 The Civic Mayor/Chair will commence the meeting, by taking the attendance by roll call to confirm the meeting is quorate.

I5.2 In the event of a loss of connection and/or an evacuation from the physical meeting room, the meeting will be immediately adjourned until the physical attendees are able to re-join the hybrid meeting.

I6. **Method of voting at remote/hybrid meetings**

I6.1 On a motion being put to the vote, the Civic Mayor/Chair will ask each decision-making member, taking each in alphabetical order, to say if they are for or against the motion or whether they abstain. The Civic Mayor/Chair will immediately announce the numerical result of the vote.

I7. **Interests of members attending meetings virtually**

I7.1 A Councillor attending virtually who would ordinarily be required to leave the room during the consideration of an item of business due to the Councillor having a disclosable pecuniary interest or to having such other interest as the Council's Code of Conduct may require the Councillor to do so, shall be deemed to have done so when the Councillor declares their interests and withdraws from the virtual element of the meeting.

I7.2 Where reasonably practicable to do so, a Councillor who has an interest under Standing Order I7.1 that would require him/her to leave the meeting, should notify the clerk in advance of the meeting.

I8. Remote/Hybrid access to meetings by the public and the Press

I8.1 Right to be present at a meeting by remote access

Members of the public and the Press have the right to hear and where practicable to do so, to see those formal meetings of the Council, Cabinet, Boards, Committees and Sub-Committees by remote access to ensure social distancing measures are met, except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private.

I8.2 Details of remote access to be included on agenda

Details of how members of the public and of the Press can hear and where practicable to do so, to see the meeting, will be included on the notice of/agenda for the meeting.

I8.3 Discussion of confidential business and disclosure of exempt information

Upon the Council, Cabinet, Board, Committee or Sub-Committee passing a motion to exclude the public and Press from the meeting due to the discussion of confidential business or exempt information, the rights of the public and the Press to see or see and hear, the meeting shall cease and their electronic access will be disconnected and the recording of the meeting will be stopped.

I9. Conduct during meetings

I9.1 The decision making Councillors attending the physical meeting in person, shall raise their actual hand and will only be permitted to speak, when called upon to do so by the Civic Mayor/Chair. Councillors in remote attendance or any member of the public exercising a right to speak in remote attendance, will only be permitted to speak, when called upon to do so by the Civic Mayor/Chair and shall cease to speak, when told to so by the Civic Mayor/Chair. At the beginning of each item and after any officer presentation, the Civic Mayor/Chair will ask Councillors attending remotely to indicate, by using the 'raise hand function', whether they wish to speak. The meeting host will advise the Civic Mayor/Chair which Councillors have requested to speak during the debate. Unless speaking microphones shall be muted to minimise background noise.

I9.2 Subject to Remote/Hybrid Meetings Standing Order I9.1, when a Councillor is speaking, no other Councillor in remote or physical attendance shall interrupt that Councillor or seek to speak over that Councillor.

I9.3 If a Councillor interrupts or seeks to speak over a Councillor who has been called upon to speak by the Civic Mayor/Chair, the Civic Mayor/Chair will warn the person concerned. If the person concerned persists in doing so at any time during the remainder of the meeting, the Civic Mayor/Chair shall mute the audio of the Councillor concerned or request the meeting host to remove them permanently from the meeting.

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Financial Regulations and Contracts Procedures

These Financial Regulations and Contracts Procedures should be considered in conjunction with the Officer Scheme of Delegation and Standing Orders in relation to the Budget and Policy Framework.

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I Definitions

Financial Regulations

1. Introduction

1.1 To conduct its business properly, Torbay Council needs sound financial management policies in place and controls to ensure compliance with those policies. In addition, the Council has additional responsibilities under statute. These Financial Regulations provide a framework of policies and controls for managing these responsibilities.

1.2 All local authorities are required to establish Financial Regulations to ensure the proper administration of financial affairs which have arisen from the legislative powers conferred upon local authorities and the consequential rights, powers and duties placed upon the Council, the Leader of the Council (where applicable), the Cabinet, Members and Officers.

1.3 The Financial Regulations apply to every Member and Officer/employee (including agency and seconded staff) of the Council and anyone acting on its behalf. All Officers and Members have a duty to abide by the highest standards of probity in dealing with financial issues.

1.4 Non compliance with these Regulations will be referred to the Chief Finance Officer (CFO) and the Head of Devon Audit Partnership, who will take appropriate action.

1.5 The Financial Regulations should ensure compliance with all accounting and auditing standards, and codes of practice, which are produced by the appropriate professional accountancy bodies.

1.6 The Financial Regulations apply to the Council and any associated companies. The CFO legislative requirements apply to all Council assets and liabilities, including those of its subsidiary companies. The CFO therefore has responsibly for the financial systems, financial procedures and financial regulations in use by those subsidiary companies.

1.7 These Financial Regulations are intended as an aid to good financial management and outline the necessary procedures to secure the proper administration of financial affairs. Financial regulations will also be supplemented by more detailed financial instructions issued as and when appropriate by the CFO or his/her nominated representative.

1.8 In these Regulations the following definitions apply:-

(a) Budget Holder – as identified on the Council Financial Information Management System (a Budget Holder is allocated to every cost centre).

(b) Chief Executive, Directors, Divisional Directors and Heads of Service – are the posts contained within the Council's Senior Management Structure.

(c) Head of Service – reference to Head of Service in these Regulations, includes the Chief Executive, Directors, Divisional Directors and Head of Service.

(d) CFO – the appointed Section 151 post and reference to it includes all nominated deputies appointed by the CFO.

2. Legislative and Regulatory Requirements

2.1 The Local Government Act 1972, in section 151, directs that there should be a specifically designated officer responsible for the proper administration of the Council's financial affairs and for reporting on these matters. The role of CFO has been given these responsibilities within the Council's management structure.

2.2 In addition, the CFO, or his/her properly appointed nominated representatives, have duties under Sections 114 and 114A of the Local Government Finance Act 1988, see paragraph 3.5.

2.3 The Accounts and Audit (England) Regulations 2015 also confer further responsibilities upon the CFO, or his/her nominated representatives, including determination of and responsibility for the accounting systems and supporting records and systems and internal control (including internal audit). These regulations have been produced to comply with these requirements.

2.4 The CFO is also responsible for the publication of financial related notices, documents and the completion of returns as required under statute.

2.5 Whilst these responsibilities are specifically allocated to the CFO, it is the responsibility of individuals identified in paragraph 1.3 to be aware of and operate within the Financial Regulations, Standing Orders in Part 4 and the code of conducts and local protocols in Part 5 of the Constitution.

2.6 For Torbay Council schools operating under the School Standards and Framework Act 1998, they have specific Financial Regulations. These are approved by the CFO in consultation with the Schools Forum.

2.7 Setting of annual budgets for expenditure and any carry forwards of surplus or deficit within the Dedicated Schools Grant (DSG) separate from the individual schools budgets is delegated to the CFO in consultation with the Divisional Director for Education, subject to any decisions that are required under statute to be approved by the Schools Forum.

3. Role of CFO (S151)

3.1 The Council supports the principles as set out in the "CIPFA (Chartered Institute of Public Finance and Accountancy) Statement on the Role of the CFO in Local Government" (2010).

3.2 Delegations to CFO are listed in the Officer Scheme of Delegation in Part 3 of the Constitution.

3.3 The CFO is responsible for advising the Council and all decision-making persons and bodies on all financial matters. Accordingly, he/she or his/her nominated representative must be consulted on all financial matters, and they should be given adequate opportunity to provide written comments on any report that may have a financial impact or commitment on the Council at some point in the future.

3.4 The CFO or his/her properly authorised and nominated deputies have a duty under Sections 114 and 114A of the Local Government Finance Act 1988 to report to the Leader of the Council, Councillors, and the Council's appointed External Auditor, if it appears that the Council, a Committee or Officer of the Council, or a Joint Committee on which the Council is represented, or the Leader of the Council or

individual Members of the Cabinet, or the Cabinet, or Committee of the Cabinet, have acted in the following legally defined instances:

(a) Has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful; or

(b) Has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Council; or

(c) Is about to enter an item of account, the entry of which is unlawful; or

(d) If it appears that the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet the expenditure.

3.5 The Council shall provide the CFO with such staff, accommodation and other resources as are sufficient to allow statutory duties.

3.6 The CFO must consult with other appropriate statutory officers and Directors of the Council, before submitting any report under Sections 114 or 114A.

4. Accounting Procedures

4.1 The CFO is responsible for keeping the accounting records of the Council including the Collection Fund and any third party income and expenditure. All financial systems and records maintained within any Business Unit shall be in a form approved by the CFO, kept up to date, and retained until after the formal completion of the external audit of the Council's accounts and issue of the Audit Opinion or as otherwise required by law or indicated in the Council's Retention of Documents Policy.

4.2 All financial documents to be retained as set out in the Council's document retention policy unless specific grant claims or statute require a longer period. Where possible, all financial documents should be scanned and saved to the Council's IT network and if contractually offered, to the Council's Records section for archive.

4.3 Accounting policies will be updated as necessary and reviewed by the CFO annually.

4.4 Accounting procedures will comply with proper accounting practice and follow principles determined from time to time by the CFO. No changes should be made to these practices without the prior approval of the CFO.

4.5 The CFO shall be responsible for interpreting and implementing all relevant legislation and guidance relating to the Council's finances, both revenue and capital. The CFO will also ensure that the Council's financial procedures comply with all current codes of practice and will report on relevant implications to the Leader of the Council, the Cabinet, Members, and Directors.

4.6 The CFO shall also be responsible for the Treasury Management function as defined by the relevant codes of practice.

5. Financial Control

General

5.1 Standing Orders in relation to the Budget and Policy Framework refer to the timetable and preparation of the Council's Revenue Budget for the forthcoming year along with revisions and indicative budgets for the forthcoming four year period for the Capital Plan. Once approved, it is the responsibility of the Chief Executive, Directors, Divisional Directors, Heads of Service and all Budget Holders to ensure net expenditure is contained within the totals approved by Council, subject to any variations to these totals that may be approved by the Council. This responsibility remains even when partners incur expenditure on the Council's behalf.

5.2 The CFO, in conjunction with Directors, Divisional Directors and Heads of Service, shall produce regular reports to the Chief Executive (and present to the Senior Leadership Team as appropriate) to the Leader of the Council for presentation at Cabinet meetings and the Overview and Scrutiny Board on the current year's budget (including comparison with actual spending and projected out-turn). The Cabinet and where required, the Overview and Scrutiny Board, will make appropriate recommendations to Council where variations to the in-year budget position require a Council decision.

5.3 The CFO, in consultation with the Chief Executive, may authorise the use of contingencies and expenditure from reserves and provisions approved as part of the Council's revenue and capital budget.

5.4 Within the context of these Financial Regulations the following definitions can be assumed to apply:

(a) Approved Budgets – Those sums approved by the Council at its budget setting meeting and identified in the Council's Budget Digest as presented at that meeting (reflected in the Council's financial information management system) and approved Capital Plan. Budgets are set at a Business Unit level and subdivided into service areas. For the purpose of these Financial Regulations, the approved budget is at the service area level, as shown in the approved budget digest.

(b) An amount is shown against an individual capital scheme or service programme.

(c) (c) Virements – the transfer of money from one approved budget to another.

(d) (d) Non cash transactions, such as sponsorship, land swaps, concessionary rents and similar transactions are to be accounted for at their market value and will be within the scope of these regulations.

Revenue

5.5 The CFO, in consultation with the Leader of the Council, is authorised to submit bids and accept any grant offers, including terms and conditions attached to such offers subject to the grant offer and terms and conditions being in accordance with the Council's policies and objectives. The CFO, in consultation with the Leader of

the Council, to determine the allocation and expenditure of any new revenue grant monies that are received during the year.

5.6 After consideration by the CFO when considering the end of the financial year position, any net uncommitted under-spends within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.

After consideration by the CFO, in consultation with the Chief Executive, when considering the end of the financial year position the following may be approved:

(a) Individual budget under-spends of £10,000 may be carried forward at the request of the Director, Divisional Director or Head of Service.

(b) Any net overspend (below £10,000) may also be carried forward to the following financial year and made good during that year.

(c) Any net unspent grant, third party funds or funds committed but not spent within a directly controllable revenue budget may be carried forward into an earmarked reserve to be used in the following financial year.

5.7 Any item in the Approved Revenue Budget saved or expected to be, and additional revenue saved above approved budget is subject to the normal virement rules. This is subject to the Council's overall financial situation where, following consultation with the CFO, the Leader of the Council (in respect of Executive functions) and Council (in respect to Council functions), a Director, Divisional Director or Head of Service may request that the budget saved is not spent or a virement is made to another Business Unit.

5.8 Within an approved Business Unit Budget, or between Business Units, the responsible Head of Service(s) of the Business Unit(s) may approve in-year virements provided that:

(a) The virement does not exceed £100,000 within individual services in a Business Unit and £50,000 between Business Units;

(b) The virement is requested in writing by the Head of Service (and a copy kept by the CFO or his nominated representative);

(c) There is no significant change of policy or significant reduction in service quality (in the opinion of the relevant Director, Divisional Director or Head of Service);

(d) All virements above £100,000 within a Business Unit and £50,000 between Business Units must be approved by the CFO in consultation with the relevant Director, Divisional Director or Head of Service and the virement is included in the next budget monitoring report considered by the Overview and Scrutiny Board; and

(e) Any changes to budgets as a result of restructures, technical accounting changes including support service allocations are not subject to the virement rules.

5.9 Urgent decisions which are not wholly in accordance with the budget will be dealt with in accordance with the Council's Standing Orders in relation to Budget and Policy Framework and Officer Scheme of Delegation.

5.10 All fees and charges, including fees set by statute, are to be approved on an annual basis as part of the budget setting process. The CFO, in consultation with the Leader of the Council, the Cabinet Lead for Finance and the Chief Executive, is authorised to make adjustments to fees and charges and introduce new charges in year within the approved budget if it is in the best interest for the Council and they have no adverse impact upon the revenue or capital budgets.

5.11 Where a permanent change to the Revenue Base Budget is being proposed (i.e. it affects more than the current financial year) the relevant Director(s), Divisional Director(s) and the Head of Service(s) concerned and the CFO will identify the proposed change as part of the next budget process.

Reserves

5.12 The responsible officer, as identified in the Review of Reserves report approved by Council, for a reserve may authorise use of contributions to and from that earmarked reserve provided that:

(a) The funds are used for the stated purpose of the reserve, as stated in the Review of Reserves report, in question;

(b) The level of such Earmarked Reserves is reported to the Overview and Scrutiny Board when the annual review of reserves report is considered (together with proposals for replenishment of the reserve in question where the CFO considers it appropriate);

(c) If the earmarked reserve is to be used for a purpose which differs from the original agreed terms of reference this must be approved by the Council; and

(d) The Council's finance system is to reflect the planned use of reserves in the year.

5.13 The CFO, in consultation with the Leader of the Council, may recommend to the Council for approval in-year virements from the Council's General Fund Reserve to any Business Unit provided that the CFO is satisfied as to the robustness and adequacy of the Council's reserves.

Capital

5.14 For each financial year Council will have an approved: -

(a) Capital Strategy

(b) Asset Management Plan

(c) Capital Plan

5.15 Each quarter the CFO, in consultation with the Leader of the Council, may approve any variations to the approved capital plan for new or existing schemes provided that the CFO is satisfied that the proposed variations will be contained within the overall approved Capital Plan or that additional (and adequate) funding resources have been identified.

5.16 Any bids (or support for a partners bid) for capital grants and contributions over £100,000 to be notified to the Leader of the Council and CFO prior to submission, to ensure the scheme is in line with Council priorities and funding and resource implications have been assessed. This will include any match funding and future revenue costs.

5.17 Prior to the approval of any scheme, the funding for the scheme and any future revenue costs must be identified and deemed to be achievable by the CFO.

5.18 The CFO, in consultation with the Leader of the Council, is authorised to determine the allocation and expenditure of any new (ring fenced) capital grants or contributions that are received during the year.

5.19 The CFO, in consultation with the Leader of the Council, may also approve any variation to timings for projects within the 4 years of the capital plan on a quarterly basis.

5.20 The allocation of any un-ring fenced grants or contributions to a service will be determined by the CFO, taking into account the overall budget position of the Council and any expectations/conditions of the awarding body. Any schemes to be funded under the Prudential Code will also be a Council decision as set out in 5.26 below.

5.21 The Budget Holder, in consultation with the relevant Cabinet Lead, is authorised to approve allocations of generic capital funding within an allocation to a service to individual projects within the overall total funding approved.

5.22 If the Council receives additional income not linked to a specific project such as a capital receipt or has an under spend on a specific scheme, this will be applied in the first instance to fund the existing Capital Plan. If the funding is in excess of the resources required to fund the existing Capital Plan, it will be allocated to a general capital reserve pending further decision by the Council.

5.23 If an urgent and unforeseen need arises to undertake a project not included in the current approved Capital Plan, or to accelerate the preparation or commencement of an unapproved scheme the proposal shall be referred to the CFO at the earliest opportunity and before a substantial amount of preparatory work (i.e. costing more that £5,000) is undertaken and only if agreed by CFO, in consultation with the Leader of the Council, the proposed capital scheme will be submitted for approval to the Council.

5.24 It is expected that individual projects should include a contingency. The approved Capital Plan will also include a capital contingency, which as a target should be 1% of the Capital Plan. Use of this contingency will be determined by the CFO, in consultation with the Leader of the Council.

5.25 If any variation to the programme has a material impact upon the revenue budget in the current or future financial year(s), such as increased running costs or prudential borrowing, this must be approved by Council.

5.26 Any decision by Council to utilise prudential borrowing must be made with regard to the prudential framework, the approved prudential indicators and policies as set out within the approved Capital Strategy.

5.27 The Council maintains a Capital Reserve list as part of the approved Capital Plan. Any new resources received by the Council, if in excess of the resources required to fund the Capital Plan should, in the first instance, be used to fund schemes maintained on the reserve list.

5.28 All capital expenditure incurred must comply with the Chartered Institute of Public Finance and Accountancy (CIPFA) definition of capital as set out in the relevant accounting proper practice. The CFO will be the arbiter of disputes in relation to the eligibility of any expenditure.

5.29 All capital expenditure must be recorded accurately including asset reference to ensure the information on all Council assets, and their component parts, is correct within the Council's asset register.

6. Audit, Anti-Fraud and Anti-Corruption

Internal Audit Function

6.1 The CFO shall maintain an adequate and effective system of internal audit of its accounting records and its system of internal control in accordance with proper Internal Audit practices, as governed by responsibilities under Section 151 of the Local Government Act 1972, and the Accounts and Audit Regulations 2015.

6.2 The internal audit service provided by the Devon Audit Partnership shall follow professional standards and guidelines in accordance with the Code of Practice for Internal Audit in Local Government in the United Kingdom issued by the (CIPFA. The Code requires that an authority should have an approved Internal Audit Strategy in place which describes how the internal audit service will be delivered, and formally defines the purpose, authority and responsibility of internal audit.

6.3 The main objectives of the internal control system are to:

(a) ensure adherence to management policies and directives in order to achieve the organisation's objectives;

(b) safeguard assets;

(c) secure the integrity, relevance, reliability, confidentiality and availability of information and resources, so ensuring as far as possible the completeness and accuracy of records;

(d) ensure compliance with statutory requirements; and

(e) ensure risks are identified and appropriately managed.

6.4 The CFO, or authorised representative, shall have authority in connection with an audit to:

(a) visit all establishments and premises of the Council and other partners where the Council has a legal interest or an open book agreement;

(b) have access to such documents which relate to the accounts of the Council, as may appear to be necessary for the purpose of the audit;

(c) call for the production of cash, stores or other property in the custody of any employee of the Council;

(d) require from any employee information and explanations necessary for that purpose;

(e) remove and keep in safe custody any books, records, vouchers and other material that may be relevant; and

(f) receive access at user level and/or system level to any computing or communications device, including access to interactively monitor and log traffic on Torbay Council's networks in accordance with the Council's Information Security Policy Framework.

6.5 The Head of Devon Audit Partnership (on behalf of the CFO) shall produce audit reports as appropriate and when an audit report is issued, the Head of the Business Unit concerned should respond in writing with an agreed action plan on any recommendations made without delay.

6.6 Where it appears that there is an opportunity of increasing the financial efficiency, economy or effectiveness of any Business Unit, the Head of Devon Audit Partnership shall, in conjunction with the CFO and the relevant Director(s), Divisional Director(s), Head of Service (s) or other authorised officer, investigate any relevant aspect of the work of any Business Unit and shall be empowered to make recommendations thereon. This includes appropriate value for money exercises.

6.7 The Head of Devon Audit Partnership shall have the right of direct access to, and freedom to report to, all senior management including the Chief Executive and Members.

6.8 Devon Audit Partnership shall be responsible for supplying to, or obtaining, such information required on behalf of itself or the Audit Committee or Overview and Scrutiny Board or other nominated sub-committee or working party or carry out any investigations requested, subject to the appropriate resources being available to undertake such investigations.

External Audit Function

6.9 The CFO shall be responsible for:-

(a) Ensuring an external audit function is being provided.

(b) Liaising with external audit in all issues relating to the Statement of Accounts, Annual Governance Statement, specific grant audits and Value for Money.

(c) Ensuring the above documents are available for External Auditors within agreed timescales and providing supporting documentation to enable External Auditors to provide an audit opinion.

Anti-Fraud and Anti Corruption

6.10 The CFO will be responsible for a Council wide anti-fraud and anti-corruption policy. All members and officers, partners and suppliers are expected to act with integrity, adhere to that policy and not tolerate fraud or corruption in the administration of its responsibilities whether inside or outside of the Council.

6.11 Members and officers shall comply with the Council's codes of conduct relating to the register of interest and gifts and hospitality.

6.12 The CFO will be responsible for ensuring whistle blowing procedures are in place.

6.13 The CFO and the Head of Devon Audit Partnership shall be notified forthwith by the Chief Executive, Directors, Divisional Directors, or the Heads of Service concerned, of any circumstances which suggests the possibility of irregularity in the exercise of the functions of the Council. The CFO or the Head of Devon Audit Partnership shall, on confirmation of the irregularity, be empowered to undertake any investigation considered necessary including informing the Police and shall inform the Chief Executive and Monitoring Officer of the full circumstances in accordance with the Council's Anti -Fraud and Anti-Corruption Policy and Protocol.

7. Banking Arrangements and Methods of Payment

Bank Accounts

7.1 The CFO is authorised to make arrangements regarding the Council's bank accounts, including the opening and closing of any account, and tendering for banking services. No charges/debits shall be set up on the bank accounts without the written consent of the CFO. All accounts must be in the name of Torbay Council.

7.2 The CFO must be notified of all bank accounts held. All bank accounts and balances need to follow the Council's banking procedures, including online banking.

7.3 All transactions in the Council's bank accounts are to be included in the Council's finance system.

7.4 The CFO is authorised to agree the overdraft facilities and the charges for the operation of the Council's bank accounts with the bank.

7.5 All charges made by the Bank must be verified as being levied in accordance with the scale of charges current at the time the charge was incurred.

7.6 All bank accounts shall, wherever practicable, be reconciled with cashbooks and/or other relevant records at least once each month.

Methods of Payment

7.7 Payments from the above-mentioned bank accounts, by cheque, Clearing House Automated Payments System (CHAPS), electronic data (BACS), direct debit, via Bankline or any other agreed format, shall only be made in accordance withprocedures agreed by the CFO.

7.8 All cheques, or similar agreed documents authorising payment, shall be signed by, or bear the facsimile signature of the CFO or other officers authorised in writing by the CFO.

7.9 All cheque payments should be made on crossed cheques unless otherwise directed and authorised by the CFO.

7.10 Where bank accounts are used for imprest accounts then two authorised signatures shall appear on the cheque.

7.11 Changes to the authorised signatures or the mandate can only be made through the CFO.

7.12 The CFO, or authorised deputies, is responsible for the transfer of funds from one bank account to another.

7.13 The CFO shall be responsible for the production of the electronic data for payments due, the forwarding to the processing centre and security.

7.14 All cheques and procurement cards shall be ordered only on the authority of the CFO, or authorised deputies, who shall ensure that arrangements are made for their safe custody and recording. Where procurement cards are issued, a record must be kept of the issue and signed by the receiving officer confirming acceptance of the applicable conditions.

7.15 Only Procurement cards under the Government Approved Scheme are to be issued. No other debit or credit cards are permitted.

7.16 A voucher and/or receipt are required for all procurement card transactions, and where the goods include VAT, a VAT invoice/receipt must be obtained.

7.17 For any payment of £250,000 and over the following additional authorisations will be required:

(a) Crossed cheques for £250,000 or over will be countersigned by a second signatory;

(b) CHAPS payments will require electronic authorisation by a minimum of two authorised officers; and

(c) A manual payment voucher for £250,000 or over will be countersigned by a bank signatory.

7.18 The CFO shall arrange such safeguards as are deemed necessary and practicable including ensuring that the following duties, as far as possible, are the responsibility of separate officers:

(a) The checking of creditors invoices;

(b) The control of cheques and like forms;

(c) The preparation of cheques and electronic payment data;

(d) The signing of cheques and like forms;

(e) The despatch of cheques or electronic data;

(f) The entry of cash accounts; and

(g) The reconciliation of bank balances.

8. Imprest and Petty Cash Accounts

8.1 The CFO, or authorised deputies, may advance a fixed imprest to an Officer of the Council for the purpose of meeting petty cash expenses. Each imprest or Petty Cash Account shall be of such an amount as the CFO, or authorised deputies, may determine in consultation with the Head of Service or other authorised officer, but shall not exceed the sum anticipated to be sufficient to meet such expenses for a period of two months, (unless there are exceptional circumstances necessitating a higher level and this is agreed by the CFO or authorised deputies).

8.2 The CFO, or authorised deputies, shall prescribe such conditions in connection with petty cash disbursements as is deemed desirable.

8.3 Petty Cash items shall be limited to minor items of expenditure and in the case of individual items, shall not exceed £100 except by arrangement with the CFO or authorised deputies.

8.4 No payments should be made from Petty Cash/Imprest Accounts where there may be HMRC implications. Petty Cash/Imprest Accounts should not be used for: -

- Travel and subsistence claims;
- Working lunches;
- Private phones (work usage);
- Salaries and wages;
- Entertaining (employees and non-employees);
- Periodic Payments;
- Construction Industry Scheme work; or
- Governor Expenses.

8.5 All Heads of Service or authorised deputies shall maintain a list of all persons authorised to sign petty cash vouchers on their behalf and a copy of this list, including specimen signatures and initials shall be supplied to the CFO and the Payments section.

8.6 A voucher and/or receipt are required for all petty cash and imprest account transactions and, where the goods include VAT, a VAT invoice/receipt must be obtained. Vouchers and/or receipts should be forwarded to the Payments section with the claim for reimbursement. The relevant Heads of Service shall certify these claims as correct or such person(s) nominated for that purpose.

8.7 No income is to be paid into a petty cash account, other than reimbursement cheques.

8.8 No personal cheques are to be cashed via a petty cash account.

8.9 Petty cash imprests must be reconciled and balanced on a regular basis and agreed to the bank statement (including un-presented cheques) where a bank account is in use. Imprests must be balanced at the 31 March each year to ensure the expenditure is changed to the correct financial year.

8.10 Every Officer holding a petty cash imprest shall certify to the CFO the amount of that imprest at 31 March each year.

8.11 The conditions for operating an imprest through a bank account must be agreed with the CFO, or authorised deputies, with the minimum of 2 signatories required.

8.12 Imprest accounts operated through a bank account must not go into overdraft.

8.13 Heads of Service shall inform the CFO in advance when employees who hold an impress account either leave the employ of the Council or otherwise cease to be responsible for the imprest. Whenever an Officer in charge of the imprest hands over, leaves or ceases to have custody of the imprest, the Head of Service, shall ensure that a prior check is made of the imprest concerned and that a handing over certificate is signed by the outgoing and incoming Officer.

8.14 Heads of Service or their authorised deputies may exercise delegated power to make ex-gratia payments to Officers, recognised volunteers and customers in a sum not greater than £50 as compensation for damage to or loss of property. Such payments can only be made when the incident occurred during normal Council activities and where such payment is calculated to facilitate or is conducive or incidental to the discharge of any of the functions of the Council. All requests for payment must be authorised and be supported with full written details of the incident and resulting damage/loss, reason for payment and evidence (e.g. receipts) of the actual cost of repair or replacement.

8.15 Where it is considered that £50 is insufficient to compensate for any damage or loss, then the individual may submit without delay details of the incident and related damage/loss to officers in the Claims Handling Section who will determine if the Council is legally liable to pay compensation via the standard claims handling procedure. If it is determined that no legal liability exists in respect of the loss/damage, then no payment will be made.

9. Assets including Estates, Non Current Assets and intellectual property

Asset Records

9.1 The CFO shall commission the Asset Management Service to maintain a terrier and asset register of all assets owned or leased in by the Council in a form approved by the CFO to comply with proper accounting practice. The asset register shall record: the holding body (if applicable); purpose details; nature of Council's interest; and rents payable, with particulars and terms of tenancies granted. The terrier is to be regularly reconciled to records held in the asset register.

9.2 The Asset Management Service, the CFO and other appropriate officers shall co-operate in the preparation and maintenance of an asset register in suitable format and containing all the relevant information to comply with proper accounting practice. The valuation of assets, including an assessment of componentisation and asset life, shall be carried out as necessary to comply with proper accounting practice. The asset register (finance module) tocontain details of accounting treatment and asset classification, including current cost and historic cost records as required. The asset register (finance module) is required to comply with proper accounting practice.

9.3 The ownership of the asset register and terrier remains with the Council, though the Asset Management Service will maintain the records held and ensure an annual reconciliation.

9.4 All non-current assets should be recorded on the asset register, but valuations are only required for those individual assets where the value is estimated to be over £25,000. Where a group of assets, e.g. computer equipment, collectively totals in excess of this amount, an entry should be made on the register to reflect this.

9.5 The Monitoring Officer shall have the custody of all title deeds and leases under security arrangements agreed with the CFO.

9.6 Intellectual property is something unique that the Council has physically created. To protect internally developed intellectual property from theft and copying, Heads of Service should consider registration ,e.g. trade marks for logos or copyright for

software created. Protecting these assets makes it easier to take legal action against anyone who steals or copies it.

9.7 If intellectual property is registered, the Head of Service must notify the CFO so the asset can be added to the asset register and the same safeguards that apply to the Council's other assets can be applied to these assets.

Asset Disposals and Leases

9.8 For approval purposes a disposal is deemed to be applicable for both a freehold disposal and any lease where the term is in excess of 40 years.

9.9 The Council shall commission the Asset Management Service to undertake the arrangements for the lease or disposal in line with the terms specified by the relevant budget holders and these Financial Regulations and Contracts Procedures.

9.10 Officers will identify surplus assets for disposal or lease in accordance with the Officer Scheme of Delegation.

9.11 Officers will identify operational assets for lease in accordance with the Officer Scheme of Delegation.

9.12 Proceeds of asset disposal will be allocated in accordance with the approved Capital Strategy. Any proposal by a service to utilise the proceeds for a specific purpose or recommend to Council the disposal of the asset at below market value will need to be agreed by CFO in light of the overall financial position of the Council and any, as yet unachieved, capital receipts target.

9.13 All disposals or leases shall be subject to a formal process prior to entering into a written contract. All disposal or leases above a market value of £50,000 in the opinion of a Royal Institute of Chartered Surveyor qualified valuer) must be publicly advertised for a minimum of ten working days via the most appropriate means applicable to the disposal, as determined by Estates and Asset Management. This includes but is not limited to, public auction; property listing websites; land, estate or property agents; formal tender process. This process shall include details of the asset and any conditions and specifying a reasonable closing date by which expressions of interest must be received.

9.14 There are instances where a disposal is deemed to be a contract under public procurement regulations. This is usually when the disposal involves an element of land development for example where there is a legally enforceable obligation on the purchaser to develop the site, for joint venture partnership arrangements in which the Council plays an active role, the Council is taking the lead on designing and funding development, or the Council is getting an economic benefit from the asset. In these instances, advice should be sought from Commercial Services.

9.15 Regulation 9.13 shall not apply to any of the following types of disposals or leases: -

(a) Grants of leases to existing tenants where security of tenure may exist and the terms of the lease not significantly changed (whether or not their existing tenancies have come to an end);

(b) Where the Grants of leases or licences relates to an asset where the length of the lease is less than 10 years;

- where the value of the asset is over £25,000, the disposal has been discussed with the portfolio holder; and
- the market rent for an annual market rent does not exceed £50,000 per annum; or
- the market value of the asset does not exceed £50,000.

(c) Disposals of land acquired under compulsory purchase powers to the original owners of that land or their successors;

(d) Disposals of freehold in land where the interest disposed of is estimated not to exceed £50,000 in market value in the professional opinion of a member or fellow of RICS; Note the Council does not dispose of freehold property unless under statute but will consider a long term lease or if exceptional circumstances.

(e) Long term lease under the Councils Community Asset Transfer Policy.

9.16 The CFO (in consultation with the Leader of the Council and Monitoring Officer) may give written authorisation to waive the requirements of Regulation 9.13 where he/she is satisfied that the proposed disposal or lease will be in the best interest of the Council and that the proposed terms of the disposal or lease are unlikely to be bettered by complying with Regulation 9.13.

9.17 All disposals and leases are to be accounted for on a gross basis showing the market value of the transactions. Any form of non cash transaction such as an exchange of land, nomination rights, or a concessionary rent below market value or similar transaction forms part of a budget holders' financial control (as set out in section 5 above).

9.18 Where a disposal or lease of land or buildings has been expressly approved by Council or the Leader of the Council (where applicable) or the Cabinet, that decision shall be actioned by Officers.

Acquisitions

9.19 Where an asset has been identified for acquisition, if the market value of the asset is less than £200,000 the Officer Scheme of Delegation applies, if in excess of £200,000 the Cabinet (where the acquisition is within the budget approved by the Council) or Council (if the acquisition is outside the budget and policy framework) shall approve the acquisition of that asset. In both cases this is subject to the funding being identified for the purpose,;any ongoing revenue implications considered and will then be included in the Capital Strategy.

10. Inventories (Moveable Property)

10.1 Items of moveable property are defined as any equipment used by a service in their duties including office equipment, specialist equipment, IT equipment including mobile phones, laptops and iPads.

(Note: Stock items used for service delivery such as printing and highways stock, and items for sale see section 11 below.)

10.2 All Heads of Service shall be responsible for preparing and maintaining an inventory of moveable property, in a standard form agreed by the CFO (see 10.5 below), for

each of the establishments under their control. All inventory records should be held electronically on the Council's network.

10.3 The inventory will record an adequate description of all moveable items of equipment, office machinery, ICT and communication equipment and other property belonging, held on leasing agreement, donated to, or on trust to the Council, valued at over £500. Where there are vulnerable items, these should be recorded in inventories irrespective of price.

10.4 All Heads of Service shall be responsible for the physical security and inventory of all computer hardware and software within their business units in accordance with ICT security policy (where this has not been purchased through ICT Services as set out in 10.2 above). Where hardware and software is purchased through ICT Services or has been assigned a Torbay asset number, ICT Services will maintain an appropriate inventory record.

10.5 Details on the inventory should include:

(a) The name of supplier;

(b) The normal location of the item;

(c) The original purchase price;

(d) Any relevant model or serial numbers, etc; and

(e) Lease, loan and trust agreement details.

10.6 All property belonging to the Council and covered by the inventory category must be recorded in inventories immediately on receipt and notified to the Council's Insurance Section where the cost is more than £500. Where practicable, inventory items should be marked in a suitable manner as being the property of the Council.

10.7 Inventories shall be checked and certified as correct and complete by an authorised officer on an annual basis, and copies of the inventories shall be supplied to the CFO on request. Deficiencies and/or surpluses should be reported to the CFO for action by the Devon Audit Partnership.

10.8 Inventory items deemed to be surplus to requirements and saleable old materials shall be disposed of only on the written authority of the Head of Service or authorised deputies. Where appropriate, items should be offered to other areas of the Council before being put up for use by other groups or offered for sale. Heads of Service shall obtain the best possible prices when disposing of redundant and obsolete items.

10.9 The CFO or authorised representative shall, at all reasonable times, have access to all property of the Council to audit the inventory.

11. Stocks and Stores

11.1 Each Head of Service shall be responsible for the care and custody of stock including items for sale and stores for items used by the service in their business unit.

11.2 Stores shall not be in excess of reasonable requirements.

11.3 Records controlling the receipt and issue of all stores and equipment shall be kept in a form to be approved by the CFO.

11.4 The CFO, or authorised representative, shall be entitled to check stores and be supplied with such information relating thereto as may be required for the accounting, costing and financial records of the Council. They shall take such action as deemed necessary to deal with any discrepancies shown in any items of stock revealed at any time. In the event of the Head of Service, or authorised representative, becoming aware of any deficiency or theft, a report should be made to the CFO immediately, so appropriate action may be taken.

11.5 The Head of Service or other authorised officer shall certify that the quantities of stocks and stores held at 31 March each year are reasonable and necessary and, except where agreed by the CFO, that there has been adequate continuous and cyclical stocktaking carried out independently of the person in charge of the store/stock concerned.

11.6 The valuation method used for the year end stock valuation will be approved by the CFO.

11.7 Surplus and obsolete stocks, having ensured that they cannot be of use elsewhere within the Council, shall be disposed of by competitive tender or public auction unless the CFO, in consultation with the appropriate Head of Service, decides otherwise.

11.8 Whenever an Officer in charge of stores hands over, leaves or ceases to have custody of the stores, the Head of Service shall ensure that a prior check is made of the stores concerned and that a handing over certificate is signed by the outgoing and incoming Officer.

12. Investments, Borrowing, Loans, Guarantees and Trust Funds

12.1 Treasury management activities will comply with the CIPFA Code of Practice for Treasury Management in the Public Services and the Council has formally adopted the following clauses:

i. The Council will create and maintain, as the cornerstones for effective treasury management:

(a) A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities;

(b) Suitable treasury management practices (TMPs), setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities;

(c) A Minimum Revenue Provision Policy; and

(d) An Investment Strategy.

ii. The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this

organisation. Such amendments will not result in the organisation materially deviating from the Code's key principles.

iii. The Council will receive reports on its treasury management policies, practices and activities, including, as a minimum, an annual strategy and plan in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.

iv. The Council delegates responsibility for the implementation and regular monitoring of its treasury management policies and practices to the Audit Committee, and for the execution and administration of treasury management decisions to the CFO, who will act in accordance with the organisation's policy statement and TMPs.

12.2 All Treasury Management decisions will adhere to the annual Treasury Management Strategy and Annual Investment Strategy approved by Council.

12.3 Investment of Council funds shall be made by the CFO in the name of Torbay Council or nominated deputies.

12.4 The Treasury Management Strategy (in line with the CIPFA Code for Treasury Management in Local Authorities and any other relevant legislation in force at the time) shall be adhered to at all times. The Strategy to include Non Treasury Investments such as loans, investment properties, pension guarantees and other guarantees.

12.5 The CFO shall be authorised to invest temporarily or utilise such surplus monies of the Council as may seem proper and in the Council's interest.

12.6 Investments to any one borrower shall not exceed the limits determined by the CFO in line with the overall counter party creditworthiness policy.

12.7 The CFO shall be responsible for the safe custody of securities and shall maintain a record of all such borrowing.

12.8 The CFO will ensure that the borrowing requirements of the Council including overdrafts are in accordance with the CIPFA Prudential Code for Capital Finance and do not exceed the authorised Limit approved by Council.

12.9 All borrowing transactions must be approved by the CFO or his authorised deputies.

12.10 All Trust Funds shall be administered by the CFO acting on the behalf of the legally appointed trustees.

12.11 All officers acting as trustees by virtue of their official position have a legal duty to exercise due care of valuables, documents, securities etc. and shall appropriately deposit them.

12.12 The requirements of the Charities Acts legislation must, where appropriate, be observed.

12.13 The granting of a loan or a guarantee to a third party for a service purpose, which is part of the Council's policy and budget framework. The CFO has delegated powers to approve a loan or guarantee if the value is under £50,000.

13. Income and Debtors

Income

13.1 Income is defined as all forms of income receipts, including internet payments, cash, bank credits, debit and credit card payments, cheques and self billing. This section also applies to partners dealing with income and cash on behalf of the Council.

13.2 Arrangements for the collection of all money due to the Council shall be subject to the approval and control of the CFO

13.3 All books of accounts, all official receipt forms or books, licences, tickets and all documents or vouchers representing receipts for cash or other forms of income, shall be in the form approved by the CFO. The Head of Service of the appropriate service or his/her nominated officer shall be responsible for the ordering, control and issue of these documents, and all receipts and issues thereof shall be properly recorded and acknowledged.

13.4 Receipts by credit or debit card, including internet payments, are acceptable where proper arrangements have been made for this facility. The CFO and Senior Information Risk Owner (SIRO) must approve all new card payment facilities and outlets offered by the Council and these must be subject to a Data Protection Impact Assessment which is approved by CFO, Data Protection Officer and SIRO. All new requests should initially be made to the Corporate Debt and Incomes Manager.

13.5 All money received on behalf of the Council shall be promptly receipted, and shall without delay be either paid to the CFO or banked in full in the Council's name as instructed. Such banking shall be made daily or at such intervals as the CFO may decide, but in any event not less frequent than once per week and in any case where the cash and cheques exceed the insurance level of the respective safe or other facility used for holding the income.

13.6 Heads of Service shall be responsible for the safe custody of cash and items having a cash value entrusted to the care of their Business Unit. The arrangements made for safe custody shall be subject to review and authorisation by the CFO.

13.7 Where a new safe is required, the Head of Service shall be responsible for notifying the Insurance Manager of the required level of cover, type of safe to be purchased and its proposed location to ensure the insurer’s requirements are met. The CFO shall be consulted prior to the purchase of any safes to ensure the insurance limits are adequate for the Council’s needs.

13.8 Maximum limits of cash holdings shall be agreed with the CFO and must not exceed the insurance limit of the safe concerned.

13.9 Collecting officers shall ensure that all cheques received are correctly dated,;the words and figures agree and are signed. Wherever possible, cheques should be endorsed on the reverse with the cheque card details (i.e. number, valid date, and value).

13.10 In all cases cheques should be marked on the reverse with either the appropriate Business Unit date stamp or a source reference (i.e. account number, Business Unit, waybill number and payer's reference) before banking.

13.11 Postal Remittances:

(a) All postal opening duties shall be clearly defined and supervised by the appropriate Head of Service or an authorised deputy, and two officers should empty all post boxes;

(b) All post shall be opened promptly in the presence of two officers, and all cheques must be marked on the reverse with the appropriate Business Unit date stamp. Cash remittances received via the post must be promptly and accurately recorded by the responsible officers and paid in as agreed in 13.5 above.

13.12 Transfer of monies from one member of staff to cashiers must be properly recorded and receipted.

13.13 Money held on the Council's behalf must at all times be kept separate from private or unofficial money and must never be used for private or unauthorised purposes.

13.14 All cash collection devices shall be emptied at frequent and regular intervals as laid down by the CFO in consultation with the Head of Service. This shall be done by two officers who shall agree and certify the amounts of cash collected, or such arrangements as the CFO may determine.

13.15 Personal cheques shall not be cashed or money loaned out of cash held on the behalf of the Council.

Debtors

13.16 Debtors are defined as all forms of income due including sundry debtors, car parking, libraries, s106 (and Community Interest Levvy) agreements, rent, fines, benefit overpayments, council tax and National Non-Domestic Rates (NNDR).

13.17 All income due shall be recognised by the raising of a debtor. This includes any income raised on any service specific financial systems.

13.18 Heads of Service shall notify the CFO as early as possible of all money due to the Council under contracts, leases, tenancy agreements, agreements for the sale of property and any other agreements involving the receipt of money by the Council.

13.19 The Head of Service or other authorised officers shall provide such particulars of charges for work done, goods supplied or services rendered on behalf of the Council and of other amounts due, as the CFO may require ensuring prompt recording of all fund's receivable by the Council. Sundry Debtor invoices and credit notes should be raised promptly and shall be produced in keeping with current Financial Information Management System (FIMS) procedures, guidance, training and advice. Invoices should not normally be raised for amounts of less than £25.00. Heads of Service or other authorised officers including partners should arrange, wherever possible, for all amounts to be collected at the actual time or in advance of the supply of goods or rendering of the service and paid in by such method as agreed by the CFO.

13.20 A credit note should only be raised where the invoice was incorrectly raised. In all other cases the write off procedure should be followed.

13.21 The CFO, in consultation with Heads of Service, will review all outstanding debt at year end and will estimate the value of debt that is likely to be uncollectible.

13.22 Debtor Account Write-Offs and any debt on any service specific financial systems, excluding Council Tax, NNDR and Housing Benefit Overpayments will be dealt with as follows:

(a) The Debtor Administrator for the specific finance system, within the Accounts Receivable (AR) module, known as FIMS, will recommend debts for write off to Heads of Service, Director/Divisional Director and the CFO;

(b) (Heads of Service or Director/Divisional Director raising the charge shall be empowered, after giving due consideration to all the circumstances involved, to write off individual's or businesses' debts up to £1,000 in total and shall inform the CFO of the action taken and state their reasoning;

(c) For all other individual's or businesses' debts of £1,000 or above in total, the Heads of Service or Director of Divisional Director shall request that the CFO approves the write off of the debt, in consultation with the Cabinet Lead for Finance;

(d) The CFO will maintain a written record of any amounts written off per individual or business over £1,000 in total. A quarterly report shall be made to the Overview and Scrutiny Board of the total amounts written off per individual or business which exceed £5,000, by category and stating the reason for write-off.

(e) The Debtor Administrator shall be empowered to write off 'de minimis' individual or business debts of upto £100.00.

(f) Provided that the Debtor Administrator has recommended debts for write off to Heads of Service and Director/Divisional Director, the CFO has the authority to write off debt of any amount.

13.23 For Debtor write offs for Council Tax, NNDR and Housing Benefit Overpayments, the following will apply:

There will be statutory debts raised under the above debt types, which after due consideration of the circumstances relating to an account, it may be considered as un-collectable and it is appropriate to write off the outstanding balance. The outstanding balances for write off's will be identified, written off and reported on a quarterly basis each financial year as follows:

(a) The Corporate Debt and Incomes Manager will consider a sample of debts (e.g. five for each debt type) and will sign that that they are appropriate accounts to be written off;

(b) The Corporate Debt and Incomes Manager will sign the Write Off Report, that all of the accounts will have been subject to a checking process by two relevant members of staff, before the debt is recommended for write off on the system; and

(c) For debts over £5,000, the CFO will sign off the Write Off Report.

Debts which are written off in the quarterly process which exceed £5000 will be reported to Overview and Scrutiny Board and Council, by debt type and stating the reason why the debt has been written off.

14. Orders for Work, Goods and Services

14.1 Orders must be issued for all work, goods and services supplied to the Council (including those supplied under a call off contract or where supplier pro-forma orders are used) and must be produced via the Council's FIMS except in the following circumstances:

Invoice payments relating to: -

- Rent
- Taxes e.g. NNDR and Council Tax
- Utility Bills e.g. Electric, Gas, Water, Telephones, TV Licences and Internet Charges
- Other Electronic Ordering Systems
- Programmed Contract Work where an official Contract Payment Certificate has been used.
- Supporting People Contracts – interface and periodic payments should be used where possible
- Temporary creditor, for 'one off' supplier payments

Or payments where it is inappropriate to obtain an invoice including: -

- Grants
- Refunds/overpayments
- Other - in agreement and format with the Payments Manager.

Any further exceptions must be agreed by the Payment Manager with the Heads of Service concerned and with the CFO.

14.2 A list of all persons approved to authorise orders within Business Units will be maintained by the FIMS Team and displayed on the Council's intranet site. Heads of Service are responsible for ensuring that these lists are complete and accurate.

14.3 Authorisation controls shall be maintained within the FIMS system. Each Head of Service shall review authorisation permissions regularly and ensure that the FIMS Team is notified of any changes to the authorisation structure immediately.

14.4 The CFO may allow orders to be auto 'Goods Receipted' in the FIMS system where it has been proven that authorisation has occurred in a system prior to the order being raised (i.e. Mayrise).

14.5 The CFO has the discretion to change the authorisation / Goods Receipting tolerance levels (either in totality or for individual contracts) if he is satisfied that it is in the best interest of the Council and that any associated risks have been minimised.

14.6 Orders shall be produced in keeping with current FIMS guidance, training and advice (including Purchase Order Processing FAQs).

14.7 Orders shall comply with current contracts and framework agreements where they exist.

14.8 Suppliers should be aware of contractual conditions and liabilities imposed by the Council.

14.9 No order shall be issued for goods, work or services unless the cost is covered by the approved annual budgets, a supplementary estimate or by virement approved by paragraph 5.8 above or delegated powers and the goods, services or works have been procured in accordance with Contract Procedures.

14.10 Every officer issuing an official order (or ordering via any other approved medium) shall ensure, and be able to show that, as far as is reasonable and practicable and with regard to the sums of money involved, that best value obtained in respect of each transaction (as per Contracts Procedures).

14.11 The CFO may approve alternative arrangements for the ordering of goods etc., where circumstances or trading necessity make this desirable. Such approval must be given in writing.

14.12 Verbal orders must only be given in cases of urgency and must only be given by officers who have the appropriate budgetary responsibility. Where a verbal order is made, it must be confirmed no later than the next working day by the issue of an official order, endorsed 'confirmation order'. With regard to major emergencies, reference should be made to paragraphs 14.16 and 14.17 below.

14.13 The CFO shall assist Heads of Service to ensure that they are able to obtain best value in line with any appropriate corporate purchasing policy. Devon Audit Partnership will assist Heads of Service by carrying out relevant Value for Money exercises where resources allow.

14.14 Each Head of Service or other authorised officer is authorised, in accordance with this Constitution and powers delegated by the Council or the Leader of the Council, to incur normal recurring and non-recurring expenditure, subject to the following conditions:

(a) Budgetary provision has been made for the expenditure by way of revenue or supplementary estimate or compensating income is recoverable from a third party; and

(b) The procurement procedures described by the Contracts Procedures and these Financial Regulations have been observed and it has been demonstrated that best value has been obtained, unless minuted authority has been given by the Council or CFO for their waiving.

14.15 In cases where orders have been lost by suppliers, confirmation of the order shall be given by sending a 'copy' of the order. This copy needs to be endorsed as being a copy as opposed to resending the original.

14.16 In the case of a major emergency (as declared by the Chief Executive or his/her authorised deputy), the ordering of goods, works or services may be undertaken by 'non-authorised' officers (i.e. no budgetary responsibility) as part of the Emergency Team. This may constitute the issue of verbal order. However, evidence of such orders must be appropriately documented with the senior officer responsible for

dealing with the emergency informing of any costs likely to lead to significant expenditure by the Council.

14.17 In the case of an emergency and where officers identify a need for expenditure of a strategic nature, then the requirements of this Constitution should prevail.

15. Payment of Accounts/Invoices

15.1 The payment of all money due from the Council shall be made by the CFO or authorised deputies, with the exception of payments made from imprest accounts and petty cash in line with section 8 above. (Note: Special arrangements have been made for some schools.)

15.2 Each Head of Service shall arrange for invoices to be sent in the first instance to the Payments Section, and any exceptions to this must be previously agreed with the Payments Manager or deputy. In accordance with directions to be specified on the orders, the supplier shall be asked to quote the name of the Business Unit, the number of the order, details of the goods or service supplied, and the place where the work was done or goods delivered.

15.3 Where purchases have been made using an approved Purchase Card scheme where one exists, it is the responsibility of each Head of Service to ensure that all card statements are checked, reconciled and authorised and that the goods/services are for business use and comply with all the current guidelines issued for Purchase Cards.

15.4 Invoices shall not be made out by officers of the Council except in any case or category of cases agreed by the CFO. Paper invoices shall only be accepted on which details are written in ink, typewritten, printed, or computer generated. All invoices from Value Added Tax (VAT) registered suppliers are required to be a valid VAT invoice in accordance with His Majesty Revenue and Customs requirement. Emailed invoices can only be accepted if they are sent directly to the Payment Section by the supplier and where appropriate should quote a (FIMS) order number. Electronic invoices may be accepted from suppliers if they meet the Council's prescribed conditions in line with Statutory Legislation.

15.5 No amendments shall be made to an invoice. Incorrect invoices should be returned to the supplier for replacement. At the discretion of the Payments Manager or deputy, invoices which do not include a valid FIMS order number may be returned to the supplier requesting further information before payment is made.

15.6 The authorisation of an invoice implies that the responsible officer(s) has examined, verified and certified that:

(a) The goods/services have been received, examined and approved as to quality and quantity, or that services rendered or work done have been performed satisfactorily;

(b) They conform to the order;

(c) The price is in accordance with the quotation, contract or current market rate, whichever is applicable or is otherwise reasonable;

(d) The arithmetic accuracy of the invoice is correct and that all trade and cash discounts, other proper allowances and other credits due have been deducted;

(e) The expenditure has been properly incurred, has been duly authorised and is within the financial provisions;

(f) The cost allocations are correct;

(g) The invoice has not previously been passed for payment and is a proper liability of the Council;

(h) Where items of moveable property are purchased costing more than £500, an entry has been made in the appropriate Inventory;

(i) Where the purchase is over £25,000 for a single item, an appropriate entry has been made in the Council's Asset Register maintained by the CFO

(j) Where the value exceeds £5,000 Officers must ensure that the Contracts Register, available via the Commercial Services Team, is completed.

(k) The duties of "ordering; receiving goods, works and services" and then "certifying the relative invoices for payment" has not be performed by the same officer, subject to the CFO being informed if such a separation of duties in any individual instance is impracticable.

The above checks should be undertaken irrespective of the order or payment mechanism used.

15.7 A list of officers authorised to certify invoices/vouchers shall be sent by each Head of Service to the FIMS Systems Team, including specimen signatures and initials. All amendments to the list shall be notified to the CFO in writing.

15.8 Invoices not received centrally (by prior agreement) shall be date stamped, examined by the Business Unit promptly and submitted within 3 working days to the Payments Section for payment. Care should be taken to ensure that 'prompt payment' discounts are not lost or any penalties incurred (i.e. late payment fees).

15.9 There are certain circumstances when it may be necessary to make a 'Manual' Payment:

(a) Invoices received (where a POP order was not required, as per 15.1);

(b) Payment required, but no invoice received and POP order not required as per 15.1; or

(c) Special arrangements, due to the nature of the service (i.e. Occupational Health); or one-off payments at the discretion of the Payments Manager.

Although these types of payments are classified as 'Manual', the method by which they are actually paid could vary, i.e. via a paper voucher or an electronic process. Authorisation for such payments (where appropriate) are in line with the Council's main Financial system, and a list of the types of payments falling into the above categories is held within the Payments Section 'Processes & Procedures' document (subject to change).

15.10 The Payments Section shall examine, in so far as is considered necessary, all invoices passed for payment and shall be entitled to make all such enquiries and to receive such information and explanations as are necessary to ensure that the invoices are in order.

15.11 Subject to the foregoing regulations being complied with, the Payments Section shall pay all invoices passed for payment.

15.12 All paid invoices and certificates shall be retained by the CFO, or authorised officer, in line with the Council's Retention of Documents Policy.

15.13 Each Head of Service, or authorised deputy, shall be responsible for prompt processing of invoices. This includes both FIMS and manually processed invoices and shall imply the following:

(a) Prompt despatch of manually certified invoices to the Payments Section;

(b) Prompt receipt goods/services (also known as GRN) on the FIMS system;

(c) Prompt response to system generated Business Event Manager messages with regard to mismatched (held) invoices on the FIMS system; and

(d) Prompt response to emails from the Payment Section with regards to logged invoices.

(e) Compliance with the duty under the Procurement Act 2023 to make payment within 30 days of receipt of the invoice.

16. Salaries, Wages, Travelling, Subsistence and Other Expenses

16.1 All staff must comply with the current version of the Council's Human Resources Polices in respect of salaries, wages, travelling subsistence and other expenses.

17. Members' Allowances

17.1 Allowances for the Leader of the Council and Councillors shall be paid in accordance with the Council's approved Members' Allowance Scheme as set in the Council's Constitution.

18. Insurance

18.1 The Insurance Manager, in consultation with the Head of Legal Services and CFO, shall affect all approved insurance cover and negotiate all claims and maintain necessary records.

18.2 Each Head of Service shall give prompt notification to the Insurance Manager of all new risks to be insured, any existing risks for which cover is no longer required and any changes to existing policies.

18.3 If there has been a failure by a Head of Service (or equivalent) to take reasonable precautions to prevent or minimise accidental injury, loss or damage or a disregard to Health and Safety requirements or the Council's Risk Management policy, an uninsured loss (excess) may be charged to the client department concerned.

18.4 Each Head of Service must notify the Insurance Manager as soon as is practically possible and then confirm in writing details of any loss, liability or damage or any event likely to lead to a claim against the Council.

18.5 Heads of Service must assist the Insurance Manager by supplying all information required promptly in order that the Insurance Manager may comply with current legislation and enable claims to be settled as quickly as possible.

18.6 The Insurance Manager shall, at regular intervals, provide other Heads of Service with details as to the progress and eventual settlement of all claims made on their behalf.

18.7 The Heads of Service shall maintain a continuous review of insurance cover held, which must include a regular review of valuations and the types of risks covered by existing policies.

18.8 All appropriate Council employees shall be insured by fidelity guarantee insurance.

18.9 No indemnities shall be given without the written authority of the Head of Legal Services, who will inform the Council's insurers when appropriate.

18.10 The Head of Legal Services and the CFO in consultation with the Insurance Manager shall administer the Council's Insurance Fund and take appropriate decisions regarding all insurance strategies. This will include financing expenditure from the fund to mitigate future risks in line with the protocol for managing the Insurance Fund.

18.11 The Insurance Manager will determine whether leased out property is insured by the Council or tenant. Where the tenant does not insure, the Asset Management Service will recover the insurance charge on behalf of the Council, through the lease.

18.12 All external contracts with a value exceeding £25,000 must include a requirement for the supplier to hold appropriate levels of insurance for the goods, services or works supplied. These must be checked at the point the contract is awarded and on at least an annual basis during the term of the contract.

19. Risk Management

19.1 Directors, Divisional Directors and Heads of Service shall ensure that risk is managed effectively in each service area within the agreed Performance and Risk Framework by ensuring all staff are aware of the Strategy and the processes detailed within it.

19.2 Heads of Service and Service Managers will identify and manage risks within their area of responsibility and these shall be communicated directly to the Head of Policy, Performance and Community Engagement for inclusion on the appropriate Risk Registers.

20. Security

20.1 Each Head of Service is responsible for maintaining proper security of assets used by their service such as cash, keys and equipment at all times and shall consult the CFO where security is thought to be defective or where it is considered that special security arrangements may be needed.

20.2 The loss of any assets must be reported to the Head of Devon Audit Partnership and the CFO.

20.3 Each Head of Service is responsible for maintaining proper security of all buildings, furniture and equipment under their control. They shall ensure that all members of their staff are aware of the Corporate Security Policy, of their responsibility for the security of offices, the possession of keys, and other means of access.

21. Group Entities

21.1 Council associates and subsidiary companies shall comply with accounting treatments and reporting as required by CFO to meet Council reporting requirements.

22. Working with our Partners

22.1 All Council arrangements with partners, in whatever legal form, that involves the Council's expenditure, income, service provision, assets, liabilities or data will apply the Financial Regulations and comply with the Council's information governance, system access and user requirements as if they were staff employed by Council. Where appropriate, they will also comply with the Council's Code of Corporate Governance.

22.2 Financial Regulations apply to individuals and companies acting as staff although not employed as such e.g. agency staff, seconded staff and other contractual arrangements.

22.3 The Financial Regulations apply to the Council and any associated companies. The CFO legislative requirements apply to all Council assets and liabilities, including subsidiary companies. The CFO therefore has responsibility for the financial systems, financial procedures and financial regulations in use by the subsidiary companies.

22.4 Working arrangements with partners to include, but not exclusively, companies the Council has a shareholding in, joint committees, pooled budgets, specific client/contractor relationships, Health Act joint working and shared services. Heads of Service are to inform the CFO of any working arrangement entered into to ensure all parties are aware of their responsibilities in relation to Financial Regulations.

22.5 The CFO:-

(a) Must ensure that the accounting arrangements to be adopted when working with our partners are satisfactory;

(b) Consider overall corporate governance arrangements and legal issues, in consultation with the Monitoring Officer, when arranging contracts with external bodies;

(c) Ensure risks have been fully appraised before agreements are entered into with external bodies; and

(d) Must protect Council data.

22.6 The CFO must ensure, where appropriate, partners: -

(a) Are aware of their responsibilities under the Council's Financial Regulations and Contracts Procedures in particular Council procurement and contract guidance, and Information Governance standards;

(b) Permit an "open book" access to information as required by the CFO;

(c) Provide information the Council relies on in a form and to a timetable as defined by the CFO or relevant contract;

(d) Must not incur expenditure which will be funded by the Council without establishing that an approved budget exists and the approval of Council's Budget Holder;

(e) Can not authorise a payment from the Council to themselves;

(f) Access to the Council's finance and other systems is to be approved by the CFO or Head of Service. Access to be reviewed on an annual basis; and

(g) Have agreed and formally accepted the roles and responsibilities of each of the partners involved in the project before the project commences.

22.7 Where partner uses the Council's FIMS on behalf of the Council. The Head of Service in consultation with the CFO is to ensure that the partner fulfils the Council's requirements in relation to its statutory duties and the Constitution, including these Financial Regulations.

22.8 For the avoidance of doubt, partners must adhere to the Council's Financial Regulations and guidance on income, rental agreements, write offs, and credit notes.

22.9 Partners must also adhere the Council's Financial Regulations and Information Governance in relation to information held by or accessed by partners on other Council's systems e.g. Asset Register and Paris.

22.10 The CFO is to approve access to Council systems for internal (Devon Audit Partnership) and the Council's appointed External Auditors.

23. The Council working for third parties

23.1 All proposals for working with third parties are to be fully costed. Where these costings exceed £25,000, approval from the CFO is required before contracts are drawn up or when applying for a contract opportunity through a tender process.

23.2 Advice should be sought from Commercial Services when applying for a contract opportunity through a tender process.

23.3 The CFO, in consultation with Heads of Service, must ensure:-

(a) That the Council is not put at risk from bad debts wherever possible;

(b) The contract is not subsidised by the Council;

(c) That wherever possible, payment is received in advance of delivery of the service;

(d) That such contracts do not impact adversely upon the services provided by the Council; and

(e) Insurance arrangements are in place.

23.4 Heads of Service will provide any documentation or information the CFO requires for financial reporting.

Contracts Procedures

A. Introduction

24. Procurement Definition

24.1 Procurement is the award, entry into and management of a contract.

24.2 In the context of these Procedures reference to Procurement includes:

(a) any step taken for the purpose of awarding, entering into or managing the contract;

(b) all or part of the procurement; and

(c) termination of the procurement before award of the contract;

regardless of whether the procurement is covered under public procurement legislation.

25. Procurement Objectives

25.1 When putting external contracts in place the Council will give regard to the importance of:

(a) delivering value for money;

(b) maximising public benefit;

(c) sharing information for the purposes of allowing Suppliers and others to understand the Council's procurement policies and decisions;

(d) acting, and being seen to act, with integrity (acting transparently, fairly and proportionately); and

(e) supporting achievement of the strategic priorities set out in the Torbay Community and Corporate Plan.

25.2 During a Procurement, the Council will treat Suppliers the same unless a difference between the Suppliers justifies different treatments. Where different treatment is justified, the Council will take all reasonable steps to ensure it does not put a Supplier at an unfair advantage or disadvantage.

25.3 The Council will give regard to the fact that small and medium-sized enterprises may face particular barriers to participation and will consider whether such barriers can be removed or reduced without putting a Supplier at an unfair advantage or disadvantage.

25.4 The Council will give regard to the strategic priorities set out in the National Procurement Policy Statement.

25.5 Where the Procurement falls under the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) the Council will act with a view to:

(a) securing the needs of people who use the services;

(b) improving the quality of the services; and

(c) improving efficiency in the provision of services.

26. Governing Legislation

26.1 These Contract Procedures are made under Section 135 of the Local Government Act 1972 and take into consideration the requirements of Sections 1 to 29 of the Local Government Act 1999.

26.2 These Procedures are governed by:

(a) the World Trade Organisation Agreement on Government Procurement (GPA), which takes precedence over national procurement regulations and legislation;

(b) the Procurement Act 2023 (for goods, services and works procurements commenced on or after 24 February 2025) which, where they apply, take precedence over local procurement considerations;

(c) the Health Care Services (Provider Selection Regime) Regulations 2023 (for relevant health care services procurements commenced on or after 1 January 2024) which, where they apply, take precedence over the Regulations and local considerations;

(d) the Public Contract Regulations 2015, the Concession Contract Regulations 2016 and Utilities Contract Regulations 2016 (collectively the Regulations) (for goods, services and works procurements commenced before 24 February 2025 ,call-offs from valid Frameworks and Dynamic Purchasing Systems set up under the Public Contracts Regulations 2015 and relevant health care services procurements commenced before 1 January 2024) which, where they apply, take precedence over local procurement considerations;

(e) other applicable primary or secondary legislation and regulations (refer to definitions for further details), including, but not limited to the Procurement Regulations 2024 effective from 24 February 2025; and

(f) the Council's Constitution, specifically Financial Regulations and the Officer Scheme of Delegation.

26.3 In implementing these Procedures. the Council will give due regard to best practice and national guidance, including government Procurement Policy Notes (PPNs) and Procurement Playbooks; the National Procurement Policy Statement, National Procurement Strategy for Local Government in England and relevant case law.

27. Application of Contract Procedures

27.1 These Procedures constitute the Council's Procurement governance framework how the Council will implement these Procedures is set out in the Commercial Policy.

27.2 These Procedures will be fully applied by any Officer or agent of the Council for:

(a) all Contracts for goods, services and works, including spot purchased, ad-hoc or one-off requirements;

(b) the expenditure of third-party funding;

(c) all Contracts for services and works concessions;

(d) the disposal of assets or awarding of leases and development agreements where it becomes a procurement as defined in section 9 of the Financial Regulations, the Procurement Act 2023 or the Public Contracts Regulations 2015; and

(e) applicable collaborative Contracts or expenditure devolved to a third party Contracting in the Council's name.

27.3 These procedures will be applied in part as applicable by any Officer or agent of the Council for:

(a) the expenditure of third-party funding, where the funder has specified a procurement method which differs from that set out in these Procedures; or

(b) the award of grants (refer to the Commercial Policy for further information on the award of grants); or

(c) direct awards to Council wholly owned companies, companies where the Council has joint ownership with other contracting authorities or between the Council and one or more other contracting authorities, or

(d) permitted direct awards for the provision of specific services to individual children and young people; or

(e) The following contracts exempted under Part 1 of Schedule 2 of the Procurement Act 2023:

i. vertical arrangements

ii. horizontal arrangements

iii. defence and security contracts

iv. utilities contracts

(f) The following subject-matter exempted contracts under Part 2 of Schedule 2 of the Procurement Act 2023, with the exception of the subject-matter exempted contracts identified at 27.4a. below.

i. Broadcasting

ii. Electronic communications services

iii. alternative dispute resolution services

iv. legal services

v. research and development services

vi. utilities contracts

vii. concessions contracts

(g) permitted direct awards under the Health Care Services (Provider Selection Regime) Regulations 2023; or

(h) where the requirements of regulation 12 of the Public Contracts Regulations 2015 or regulation 17 of the Concession Contracts Regulations 2016 are

met[1]; or

(i) works contracts where a Utility has a non-contestable right to undertake the work; or

(j) contracts covered under regulation 9, 10(c), 10 (d), 10(h), 10(i), 10(j), 11 and 17 of the Public Contracts Regulations 2015[2]; or

(k) contracts covered under regulation 10, 11, 12, 13, 14 and 16 of the Concessions Contracts Regulations 2016[3].

27.4 These procedures will not apply to:

(a) the following subject-matter contracts specifically exempted under Schedule 2 of the Procurement Act 2023:

i. land and buildings

ii. financial services

iii. employment

iv. emergency services

v. public passenger services

vi. international agreements and organisations

vii. national security

viii. inteilligence activities

ix. defence and security

x. commercial contracts of the City of London

(b) contracts excluded under regulations 8, 10(a), 10(b), 10(e), 10(f) and 10(g) of the Public Contracts Regulations 2015[4], or

(c) the disposal of assets (such as land) and the awarding of leases, except where it becomes a procurement as defined in section 9 of the Financial Regulations or the Public Contracts Regulations 2015; or

(d) sponsorships.

27.5 These Procedures, supported by relevant policies, procedures and guidance, set out the minimum standards necessary to:

(a) deliver best value, economy, efficiency and effectiveness within external Contracts;

(b) meet legislative requirements;

(c) avoid practices which may distort, restrict or prevent competition; and

(d) meet transparency obligations in relation to the spending of public funds;

27.6 The only exemptions to these Procedures are those set out in Section H (Waivers).

[1] refer to definitions for further details
[2] refer to definitions for further details
[3] refer to definitions for further details
[4] refer to definitions for further details

28. Contracting Authority

28.1 Torbay Council is the Contracting Authority; this means all Contracts will be executed in the Council's name and not in the name of individual directorates or services.

28.2 Where a company wholly owned by the Council is putting a Contract in place this will also be in the Council's name unless the wholly owned company is the Contracting Authority.

28.3 Where the Council is entering into a collaborative Contract with other public sector organisations the Council may not be Contracting Authority but will remain accountable for ensuring the Contract is put in place in a compliant manner and for meeting its obligations under the Contract.

29. Roles and Responsibilities

Table 1: RACI Matrix

Task	Monitoring Officer / section 151 Officer	Directors / Divisional Directors	Commercial Services Team	Officers / Agents[5] of the Council	Members	Internal Audit
Administration and monitoring or these Procedures	A / R	C	C	I	I	I
Ensuring understanding of and compliance with these Procedures	A	A	C	R	R	I
Advising on the Application of these Procedures	A	C	R	C	I	C
Developing the policy, guidance and training materials which sit below these Procedures	I	I	A / R	C	C	C
Completing Procurement training relevant to the role	I	A	C	R	R	I

[5] Including staff within Council wholly or jointly owned companies

Monitoring and reporting compliance with these Procedures	A	R	R	I	R	C

Definitions	
R = Responsible The people who do the work, to complete the task.	A = Accountable The person who makes sure the responsible people know the expectations and complete the task on time.
C = Consulted The people who provide input and feedback on the work, as they have a stake in the outcome of the task.	I = Informed The people who need to be aware of the progress of the task, they need to know what is going on but are not decision makers

30. Breach of Contract Procedures

30.1 Any breach of these procedures will be dealt with in accordance with the Council's Commercial Policy and human resources policies.

30.2 Where the breach is also a breach of legislation or regulations, the Council and / or individual Officers may be subject to legal proceedings.

31. Use of Consultants

31.1 Any consultant or agent acting for the Council in a procurement capacity will be required to comply with the requirements of these procedures and must be competent in public procurement.

32. Spend Category Definitions

32.1 Services – the provision of any type of service other than those which fall within the definition of a works Contract or a social and other specific services Contract.

32.2 Light Touch / Social and Other Specific Services – the provision of certain health, education, social, religious, hospitality, legal, security, community and prison related services.

32.3 Relevant Health Care Services - any service that has a direct effect on the health of the service user accessing it.

32.4 Goods – the purchase, lease, rental or hire purchase (with or without an option to buy) of goods, supplies or products, which may also include, incidental to the supply, the putting on site or installation of the product.

32.5 Works – the execution or design and execution of construction, civil engineering, demolition, building installation and building completion works.

32.6 Concession – the supply, for financial interest, of works or services where at least part of the consideration for that supply is a right for the Supplier to exploit the works or services and where the Supplier is exposed to real operating risk.

B. Procurement Planning

33. Authority to Undertake a Procurement and Award Contracts

33.1 Approval to commence a Procurement and the subsequent award of a Contract will be obtained in accordance with the Officer Scheme of Delegation.

33.2 Officers undertaking procurement activity will be appropriately trained in accordance with the requirements set out in the Commercial Policy.

34. Estimated Value of the Contract

34.1 The estimated value of a Contract will be calculated in accordance with the requirements set out in the Regulations and the Commercial Policy, considering any options to extend the Contract and/or the division of the Contract into lots.

34.2 The Council will not sub-divide or artificially disaggregate Contract values in any way and will consider spend across the whole Council for the requirement.

35. Threshold Values

35.1 The UK Government biennially sets Threshold Values for the purposes of applying the Regulations. There are different Threshold Values for goods and services and, light touch services, works and concessions (services, light touch services and works) Contracts.

35.2 The Council will take the Threshold into account when determining how to conduct a Procurement.

36. Procurement Timescales

36.1 The time limit for receipt of Tenders will be set in accordance with the requirements of the Regulations for above Threshold Procurements, considering the procurement procedure used, the complexity of the Contract and the length of time required by Suppliers to complete their Tender.

36.2 The time limit for receipt of Tenders for below Threshold Procurements will be based on the complexity of the Contract and the time required by Suppliers to complete their Tender.

37. Conflicts of Interest

37.1 To avoid any distortion of competition and ensure equal treatment of Suppliers the Councill will take all appropriate measures to effectively identify, remedy and prevent any conflicts of interest which may arise during the course of a Procurement, in accordance with regulatory requirements (e.g. Part 5 of Chapter 6 of the Procurement Act 2023, regulation 24[6] of the Public Contracts Regulations 2015) and the Commercial Policy.

37.2 Officers will be bound by their obligations under the Code of Conduct for Employees and the Bribery Act 2010.

[6] refer to definitions for further details

38. Confidentiality

38.1 The Council will consider any requirements for the disclosure of information under the Regulations, Freedom of Information Act, and any other requirement or permission that is applicable under the law.

38.2 All Officers, agents of the Council or other stakeholders having access to information or documentation about the Procurement will be bound by the confidentiality requirements set out in the Commercial Policy.

38.3 Where there is a requirement to share confidential information with Suppliers, such as details relating to the transfer of staff, this will not be disclosed unless the Supplier has signed and submitted an appropriate Confidentiality Agreement.

39. Risk Assessments

39.1 The Council will take a risk-based approach to determining the route to market and level of Contract management required for individual Contracts. This approach is set out in the Commercial Policy.

39.2 For high value Contracts where there is a significant level of risk the Council may consider the requirement for a Supplier to provide some form of bond or guarantee. The inclusion of bonds or guarantees will be subject to the approval of any officer within Financial Services nominated by the Director of Finance to give such approval.

39.3 The assessment of Supplier financial standing will be undertaken in a manner that is proportionate to the nature of the Contract and level of risk, giving due regard to ensuring requirements do not have the effect of disadvantaging Small and Medium-Sized Enterprises (SMEs), Voluntary and Community Social Enterprises(VCSEs) or new businesses or barring them from Tendering.

C. Routes to Market

40. Procurement Procedures

40.1 The procurement procedure used will be established in accordance with Table 2, considering the value, complexity,and risk associated with the Contract.

40.2 Instructions on how to calculate the estimated value and full details of the individual procurement options are contained within the Commercial Policy.

Below Threshold Procurements

40.3 Commercial Services will establish the appropriate route to market from those identified in Table 2 considering the value, risk and complexity of the Contract and market capacity.

Above Threshold Procurements

40.4 The Council will use only those procedures permitted under the Regulations; Commercial Services will establish the appropriate route to market considering the value, risk and complexity of the Contract and size of the market. This includes the use of Framework Agreements, Dynamic Purchasing Systems (procured under the Public Contracts Regulations 2015 and available for use, in accordance with the transition arrangements set out in the Procurement Act 2023, after 24 February

2025) and Dynamic Markets which the Council is eligible to access and where the Procurement can be undertaken in accordance with the specific call-off process.

Table 2: Procurement procedures - below and above threshold Contracts

Goods/Services[7]/Works[8] Estimated Value of the Procurement	**Procurement Procedure**
Up to £25,000	Where the requirement is not complex and can be assessed purely on the basis of price or price and simple quality requirements: • obtain at least one written quote by email from a Supplier based within the local authority boundary, including SMEs and / or VCSEs only. To ensure best value quotes should be requested from a minimum of three Suppliers; • where it can be demonstrated there is a lack of a local competitive market quotes may be sought from Suppliers (including SMEs and / or VCSEs only): o based within the Devon geographical boundary; or o with no geographical boundary. Where award of a Contract is subject to complex quality requirements, one of the options from £25,000 to Threshold should be used.
£25,000 to Threshold	The most appropriate option identified by Commercial Services, considering risk, value, complexity, market and urgency of the Contract: • request informal or formal written quotes by email or through the Council's e-tendering portal from a minimum of three: o Suppliers based within the local authority boundary; or o SMEs and / or VCSEs based within the local authority boundary; or o Suppliers (including SMEs and / or VCSEs only), where it can be demonstrated there is a lack of a local competitive market: ▪ based within the Devon geographical boundary; or ▪ with no geographical boundary. • open invitation to tender through the Council's e-tendering portal with competition reserved for: o Suppliers based within the local authority boundary; or o SMEs and / or VCSEs based within the local authority boundary; or o Suppliers (including SMEs and / or VCSEs only) based within the Devon geographical boundary; or o SMEs and / or VCSEs with no geographical boundary, where it can be demonstrated there is a lack of a local competitive market; • open invitation to tender through the Council's e-tendering portal, where there is a lack of a local competitive market;

[7] Including Service Concessions
[8] Including Works Concessions

Goods/Services[7]/Works[8] Estimated Value of the Procurement	**Procurement Procedure**
	• call-off from an established framework or dynamic purchasing system; • call-off from an established framework with participation in the further competition reserved for Suppliers based within the local authority boundary and where restricting competition in this manner is permitted under the terms and conditions of the framework; • call-off from an approved standing list; • direct award to a company wholly owned and controlled by the Council or jointly owned and controlled with other contracting authorities where best value is demonstrated; • direct award to another contracting authority where best value is demonstrated; • direct award where it can be clearly demonstrated that only one Supplier can meet the need and there is no scope for competition (refer to the Commercial Policy and guidance for the specific circumstances under which a direct award can be considered).
Above Threshold	• advertised invitation to tender through the Council's e-tendering portal; • call-off from an established framework, dynamic market or dynamic purchasing system; • direct award to a company wholly owned by the Council or jointly owned with other contracting authorities where the conditions set out in the Regulations permitting a direct award are met and best value is demonstrated; • direct award to another contracting authority where the conditions set out in the Regulations permitting direct are met and best value is demonstrated.

40.5 A Supplier is deemed to be based within the local authority boundary where the Supplier is based within the boundary or has established substantive business operations there, not taking account of the location of the corporate ownership or control of the supplier.

40.6 When reserving competition to Suppliers (including where reserved for SMEs and / or VCSEs) based within the local authority boundary, this must be clearly stipulated in any invitation to bid and / or below threshold tender notice. The invitation or notice must clearly set out the extent of the geographical area in which they must be based.

40.7 When reserving competition to SMEs or VCSEs, this must be clearly stipulated in any invitation to bid and / or below threshold tender notice.

40.8 Where the Contract relates to funding provided by an external body, the procurement procedure selected must comply with any requirements or thresholds

set by the funder or laid out in relevant statutory guidance. Where there is no such guidance the process will be established in accordance with 40.1 above.

Procurements captured by the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR)

40.9 There are no spend thresholds associated with PSR;, the Procurement procedure used will be established in accordance with PSR guidance and will comprise only those the procedures permitted under the legislation as set out in Table 3.

40.10 Procurement under PSR will be undertaken in all cases where the subject matter of the Contract encompasses any of the relevant health care specified within the legislation.

40.11 When a contract comprises a mixture of in-scope health care services and out-of-scope goods or services, relevant authorities may only use the PSR to arrange those services when both of the below requirements are satisfied:

i. the main subject-matter[9] of the Contract is in-scope healthcare services;

ii. the relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.

40.12 The ability to restrict competition to Suppliers based within the local authority boundary and / or SMEs and VCSEs does not apply to contracts tendered under PSR.

Table 3: Procurements for health services which fall under the Provider Selection Regime

In-scope Health Care Services	Procurement Procedure
All levels of spend – Procurements where all of the requirements are captured under PSR	One of the following options will be used, subject to the specific circumstances set out in the PSR which apply to the contract: • direct award process A; • direct award process B; • direct award process C; • the most suitable provider; • the competitive process.
All levels of spend – Mixed Procurements where only some of the requirements are captured under PSR	• here all of the conditions for undertaking a mixed procurement under PSR are met the appropriate Procurement procedure as set out above will be used. • where all of the conditions for undertaking a mixed procurement under PSR are not met the appropriate Procurement procedure as set out above will be used for those requirements which fall under PSR, all other requirements will be procured in accordance with Table 2 .

[9] The main subject-matter of the contract is determined by the component that is higher: a) the estimated lifetime value of the health care services; or b) the estimated lifetime value of the other goods or services.

40.13 Further information on PSR award processes is provided within the Commercial Policy or can be found at: NHS England » The Provider Selection Regime: statutory guidance.

41. Tender Advertising and Publication of Awarded Contracts

41.1 The Council will advertise procurements and publish details of awarded Contracts as follows:

Table 4: Advertising and publication requirements under the Regulations, Local Government Transparency Code and PSR

Notice Type	Below Threshold Procurements[10]	Above Threshold Procurements
Prior Information	In some cases, a Prior Information Notice (PIN) may be published to inform the market of the Council's intention to issue a Tender in the future or to advertise Contract specific Supplier events.	
Advertising Tenders with restricted competition	There is no requirement to publicly advertise Tenders with a value below £5,000 (excl. VAT). Tenders with a value of £5,000 (excl. VAT) or more, where competition is restricted to pre-selected Suppliers (including quote processes, Framework further competitions and some awards through the waiver process) will not be publicly advertised.	Framework further competitions and all other forms of restricted competition will not be publicly advertised.
Advertising Tenders with open competition	All open Tenders with a value between £5,000 (excl. VAT) and £30,000 (inc. VAT) will be advertised in a manner appropriate to the route to market and the contract being tendered. As a minimum, all open Procurements with a value in excess of £30,000 (inc. VAT) will be advertised in accordance with the advertising requirements set out in the Regulations and on the Council's E-tendering System.	As a minimum, all open Tenders will be advertised in accordance with the advertising requirements set out in the Regulations and on the Council's E-tendering System.
Other means of advertising	In addition to the advertising requirements set out above, where applicable to the nature of the Contract, the opportunity may be advertised through other means, including social media or in relevant trade publications.	
Publishing	As a minimum details of awarded	As a minimum, notices relating to

[10] Please note there are no thresholds in respect of Procurements carried out under PSR

Notice Type	Below Threshold Procurements[10]	Above Threshold Procurements
contract award notices	Contracts with a value of £30,000 (inc. VAT) or more will be published in accordance with the publication requirements set out in the Regulations Where the Procurement is conducted under PSR, details of awarded contracts will be published in accordance with the requirements set out in PSR.	the award of a Contract will be published in accordance with the publication requirements set out in the Regulations or PSR.
Publishing contract modification notices	As a minimum, notices relating to the modification of a Contract will be published in accordance with the publication requirements set out in the Regulations or PSR.	
Contracts Register	Where it meets the threshold (£5,000 excl. VAT) for publication under the Local Government Transparency Code 2015 details of the awarded Contract will be published on the Council's Contracts Register. Details of awarded Contracts with a value below £5,000 (excl. VAT) will not be published, other than where they appear on the Spend Over £500 report. The Contracts Register will be updated when a Contract is extended, varied, or terminated.	

41.2 The Council will make all documents and information (other than that considered to be confidential) relating to the Procurement and its requirements available to Suppliers at the start of the procurement, where applicable this will be within any timescales from the date of publication set out in the Regulations.

41.3 Suppliers will be given free and unrestricted access to Tender documents, other than where they are of a confidential nature.

41.4 Confidential information will be issued to Suppliers following completion and submission of a confidentiality agreement.

41.5 The Council will run procurements through the E-tendering System where:

(a) the Contract is above Threshold, including where competition is restricted (e.g. Framework further competitions, Dynamic Market and DPS call-offs[11]);

(b) for below Threshold Contracts the procurement procedure used specifically requires use of the E-tendering System or where it is considered appropriate for market and process being undertaken.

unless the Commercial Services Team considers use of the E-Tendering System is not deemed appropriate for a particular procurement, e.g., where a Framework / DPS owner specifies use of an alternative system.

[11] Refer to 40.4 for further information on use of DPS

D. Procurement Process and Tender Assessment

42. Communication

42.1 The Tender documents will specify:

(a) the manner in which Suppliers must submit clarification questions during the tender period and the deadline for submission of clarification questions;

(b) the manner and timescales in which the Council will respond to clarification questions;

(c) the manner in which post tender clarification questions will be issued to Suppliers and the manner in which they must respond.

42.2 Suppliers' clarification questions will be restricted to questions relating to the Tender documentation or the process as a whole. The Council will not accept or respond to questions relating to the negotiation of any of the substantive terms and conditions of the Tender.

42.3 Unless a Supplier's question is innovation based, the response will be provided to all prospective Suppliers. The identity of the Supplier who raised the question will remain confidential.

42.4 Where a clarification leads to amendments to the Tender documents or any of the Tender requirements, the changes will be communicated to Suppliers either through the clarification process for the procurement or through the issuing of clearly marked revised documents, as applicable to the nature of the change.

42.5 Where Tender documents are subject to significant modification, the Council will extend the submission deadline where it is deemed further time is required by Suppliers to address the changes.

42.6 Post tender clarification will be for the sole purpose of clarifying the content of a Supplier's submission. The Councill will not enter into negotiations on fundamental aspects of a submitted Tender which is likely to distort competition.

42.7 Post tender clarification may be issued electronically or during a formal meeting with the Supplier. Where post tender clarification meetings are held, a record of the meeting will be made and held on file.

42.8 The Council will consider whether any specific post tender clarification questions relate to and should be asked to just one or all Suppliers.

42.9 Where post tender clarification results in a material change to the requirements and/or resultant Contract approval to proceed with the Procurement will be sought from the Commercial Services Team.

42.10 Where the Tender is being run through the E-Tendering System, all communication with prospective Suppliers will be conducted through the E-Tendering System.

43. Reserved Contracts

43.1 The Council may reserve the right to restrict participation in a particular Procurement where explicitly permitted to do so under the Regulations or other secondary legislation, including sheltered workshops / sheltered employment programmes, social enterprises / public service mutuals and SMEs or VCSEs.

44. Collaborative Arrangements

44.1 Where it is of benefit to the Council, considering any adverse effect on the local economy, opportunities to collaborate with other public bodies or use existing national or regional Contracts, Frameworks and Dynamic Purchasing Systems, including those put in place by Central Purchasing Bodies, will be explored.

45. Tender Pack

45.1 The Council's above Threshold Tender templates will be used for all above Threshold procurements to ensure compliance with Regulations and consistency for Suppliers, other than where use of a Framework Agreement or DPS requires use of specific Tender documents.

45.2 The Council's below Threshold Tender templates will be used for below threshold procurements where it is appropriate to do so, subject to the nature and complexity of the Contract, to provide consistency for Suppliers.

45.3 Where the value of the Contract is £25,000 (excl. VAT) or more the Council will issue an appropriate set of terms and conditions with the Tender pack, this may be the Council's own standard terms for the provision of goods or services, industry standard contracts such as JCT and NEC, Framework or DPS call-off contracts.

46. Tender Submission, Opening and Acceptance

46.1 The manner and deadline for submission of Tenders will be set out in the Tender documents' the Council will only accept Tenders submitted in accordance with the Tender requirements.

46.2 Where the E-Tendering System is used, all above Threshold Tenders and some below Threshold Tenders will be electronically sealed until the submission deadline has passed. Tenders will be unsealed at the same time by an authorised Verifier, independent of the Procurement, in the presence of the relevant procurement lead officer.

46.3 The Council will not accept Tenders which are received after the prescribed date and time for submission.

46.4 The Council will, at is sole discretion, have the right to reject Tenders under any of the following circumstances:

(a) the Supplier has not submitted a full Tender response, i.e. where response documents are missing or are not fully completed;

(b) the Supplier has not submitted their Tender response in the format stipulated in the Tender documents;

(c) the Supplier is in breach of any of the conditions set out in the Tender documents;

(d) the price submitted by the Supplier is deemed by the Council to be abnormally low where, in accordance with the Regulations, the Supplier is unable to satisfactorily account for the low price, or the Supplier has received a Subsidy which has resulted in a distortion of competition;

(e) where the price exceeds the budget declared in the Tender documents and it is stated that Suppliers' prices cannot exceed that budget.

46.5 If the lowest price obtained exceeds the Threshold and the Procurement has not been undertaken in accordance with the Regulations, the Council will restart or abandon the Procurement.

47. Tender Assessment

47.1 Tenders will be assessed against the criteria set out in the Tender documents, including any sub-criteria, weightings, and scoring methodology. The assessment criteria will be proportionate and applicable to the nature, value, level of risk and complexity of the Contract and cover the following:

(a) Mandatory and discretionary grounds for exclusion – this looks backwards at whether the supplier and any other organisations (including parent company or sub-contractors) have been convicted of any of the offences set out in Schedule 6 (Mandatory Exclusions Grounds) or Schedule 7 (Discretionary Exclusion Grounds) of the Procurement Act 2023 or any other mandatory or discretionary exclusion grounds relevant to the regulations under which the contract is being procured.

(b) Conditions of Participation – this looks backwards at the Supplier's track record, considering their suitability to pursue a professional activity, economic and financial standing and technical and professional ability; and

(c) Award criteria – this looks forwards at what will be provided under the Contract, directly linked to the subject matter of the Contract, used to establish the Most Advantageous Tender (MAT) and comprising an assessment of quality, price and social value.

47.2 Where there are errors or discrepancies within a Supplier's Tender response, the Council will give the Supplier the opportunity to rectify the errors or discrepancies only if it is determined the Supplier will not gain an unfair advantage.

47.3 Assessments will be conducted by an appropriately skilled and experienced panel and, subject to the route to market, will be moderated by a member of the Commercial Services Team.

E. Award Procedures

48. Contract Award

48.1 Contracts will be awarded in accordance with the stated criteria, and all awards will be approved in accordance with the Officer Scheme of Delegation.

48.2 The Council will notify Suppliers of the Tender outcome in accordance with the requirements of the Regulations (where applicable), the Commercial Policy. Where mandated under the Regulations, this will include the observance of a standstill period before the Contract can be entered into.

48.3 Where applicable, the Council will prepare an award report as required under Regulation 84 of the Public Contracts Regulations 2015 or the Procurement Act 2023 and any associated secondary legislation such as the Procurement Regulations 2024.

48.4 Notices will be published as stated in paragraph 42 (Tender Advertising and Publication of Awarded Contracts).

49. Contracts Arrangements

Note: This Procedure (so far as it relates to Contracts entered in the course of the discharge of executive functions) complies with the requirements of Article 8 of the Local Authorities (Executive and Alternative Arrangements) (Modifications of Enactments and Further Provisions) (England) Order 2001 (SI 1517/2001) and power to modify this Procedure may not be delegated by the Council.

49.1 Any Contract with a value exceeding £25,000 (excl. VAT) entered into on behalf of the Council in the course of discharge of any function (whether executive or Council) will be made in writing and in a form in accordance with Financial Regulations and these Procedures. The Supplier will not be permitted to commence any activities until the Contract has been signed by both parties.

49.2 All Contracts with a value exceeding the Threshold for Goods and Services will be made under the common seal of the Council attested by at least one Officer.

49.3 All contracts below the threshold set out in 49.2 must be submitted to Legal Services for signing unless written approval has been given by Legal Services for the Director, Divisional Director or budget holder to sign the contract.

49.4 The use of Supplier Terms and Conditions will not be permitted other than where explicitly approved through the Waiver Procedure.

F. Contract Management

50. Contract Performance Management

50.1 An appropriate Officer will be appointed to act as the Contract Manager, to conduct regular reviews of the Supplier's performance against the requirements and key performance indicators specified in the Contract and monitor compliance against contractual obligations for the life of the Contract.

50.2 All Contracts with a value exceeding £25,000 (excl. VAT) will be risk assessed using the Contracts Risk Matrix to determine the required level of Contract Management and frequency of Contract review meetings required.

50.3 The level of contract management and monitoring will be based on the value, risk and complexity of the Contract. The outcome of all Contract review meetings will be recorded in writing.

50.4 The Contract Manager will deal with any instances of poor performance, claims or disputes in accordance with the procedures set out in the Contract.

51. Contract Modification

51.1 Approval to modify Contracts during their term will be in accordance with the Officer Scheme of Delegation.

51.2 Contracts will be modified following the Change Control Procedure set out in the Contract terms and conditions and in accordance with the Commercial Policy.

51.3 Changes will only be made where the Regulations, the Tender documents and / or the terms and conditions explicitly permit the change.

52. Contract Termination

52.1 Approval for the early termination of a Contract will be in accordance with the Officer Scheme of Delegation. Where the value of the Contract exceeds £100,000 Legal Services, the CFO and the Monitoring Officer will be consulted prior to termination of the Contract.

G. Other Procurement Considerations

53. Gifts and Hospitality

53.1 Officers will comply with the Council's Code of Conduct for Members and Employees and the Local Protocol on Gifts and Hospitality in their dealings with Suppliers and Suppliers.

53.2 Officers will not be permitted to accept any gift or hospitality, including drinks, meals, entertainment, overnight accommodation, travel and holidays, but does not include a lift in a private or company car, a taxi, or refreshments in the course of their duty.

54. Audits

54.1 Officers will agree responses to audits by external funders in relation to procurement procedures used in spending of the funds with the Commercial Services Team, including meetings and written responses.

54.2 Where an internal audit raises concerns or identifies areas of non-compliance with these Procedures, the Commercial Services Team will be consulted by the service on any actions required to rectify the issues.

55. Nomination of Sub-contractors

55.1 Where the Council stipulates, use of specific sub-contractors by a main Supplier' this will only be permitted where the sub-contractor has been appointed in accordance with these Procedures.

H. Waivers

56. Waiver Procedure

56.1 Officers may only seek exemptions to the application of these Procedures in respect of the requirements set out in this section.

56.2 Exemptions to the application of these Procedures will be subject to written authorisation in accordance with the Waiver Procedure set out in the Commercial Policy.

56.3 The Council will maintain a record of all waivers requested, declined, and approved.

57. Exemptions from Using the Applicable Procurement Procedure

Below Threshold Contracts

57.1 An exemption to use an alternative Procurement Procedure to that stipulated in these Procedures will only be considered where the requesting officer is able to provide appropriate justification and supporting evidence in respect of the request, for example:

(a) the proposed contract is of a very specialist nature and there are insufficient

Suppliers to undertake the applicable procedure, including:

- genuine monopoly Supplier situation where it is not possible to undertake a competitive tender exercise;
- specialist products where no legal challenge from an alternative Supplier could occur;
- standardisation policy or compatibility requirements for products / equipment / services where there is only one source of supply and change could result in significant alterations to working practices or service delivery;

(b) the proposed contract is required urgently; the urgency is not brought about by events that were foreseeable by or attributable to the Council and where the situation would result in risk of harm to individuals or loss or damage to the Council;

(c) it would be in the best interests of the Council or local people not to undertake the applicable procedure.

57.2 All Contracts put in place through an exemption will be for the minimum period, necessary, and appropriate due diligence checks will be undertaken in respect of the selected Supplier(s).

57.3 All other requirements of these Procedures will apply to the award of the Contract, other than where the waiver includes Other Exemptions as set out at section 60 below.

Above Threshold Contracts

57.4 Exemptions to the application of these Procedures for above Threshold Contracts will only be considered where the alternative procedure is permitted under the Regulations and the specific circumstances under which an alternative procedure can be undertaken are met.

58. Other Exemptions

Tender Pack

58.1 Agreement may be sought for the use of alternative Tender templates to those applicable to the Procurement procedure.

Tender Submission, Opening and Acceptance

58.2 Agreement may be sought to follow an alternative route for the issuing and submission of tender to facilitate ease of access to opportunities for SMEs VCSEs.

Contract Arrangements

58.3 Exemption may be sought for the use of Supplier Terms and Conditions, subject to review of the terms and conditions in accordance with the Commercial Policy.

58.4 Use of another contracting authority’s terms and conditions of contract.

I. Definitions

Term	Definition
Above Threshold	A Procurement which is above the relevant Threshold for the requirement.
Award	The process used by the Council to determine the successful Supplier following a Procurement or the process of awarding the Contract, considering any specific requirements set out in the Regulations.
Award Criteria	The criteria against which Tenders are assessed and on which Contract award decisions are made, will include but is not limited to consideration of quality, price and social value.
Award Notice	The official notice which the Council is required to publish under the Regulations to notify the details of Contracts awarded.
Below Threshold	A Procurement or Contract which is below the relevant Threshold for the requirement.
Call-Off	The process of awarding a Contract under a Framework or Dynamic Purchasing System.
Call-Off Contract	The Contract awarded following a call-off from a Framework or Dynamic Purchasing System.
Central Purchasing Body	A contracting authority which: • acquires goods or services intended for one or more Contracting authorities; • awards public Contracts intended for one or more Contracting authorities; or • conclude framework agreements for work, works, goods or services intended for one or more Contracting authorities.
Commercial Policy	The set of rules and associated guidance which set out the Council's procedures for meeting the requirements of these Procedures, the Regulations and other legislative or regulatory obligations in relation to Procurement.
Commercial Services	The Council department responsible for the management and oversight of Procurement activities, including the setting of policies and guidance.
Concession (Contract)	A contract for the supply, for pecuniary interest, of works or services to a contracting authority where: • at least part of the consideration for that supply is a right for the Supplier to exploit the works or services; and • under the contract, the Supplier is exposed to a real operating risk.

Term	Definition
	An "operating risk" is a risk that the Supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk: • are reasonably foreseeable at the time of award; and • arise from matters outside the control of the contracting authority and the Supplier.
Concession Contracts Regulations 2016	The legislation incorporated into English law concerning the procurement by public authorities or utilities of public services or works concessions contracts. The Concession Contracts Regulations 2016 (legislation.gov.uk)
Conditions of Participation	The criteria used to establish a Supplier's legal, economic and financial standing, capacity and capability to fulfill the requirements of the Contract.
Confidentiality Agreement	An agreement which binds one or more parties to non-disclosure of confidential or proprietary information.
Constitution	The document which sets out the rules governing the Council's business.
Contract(s)	A legally binding agreement between the Council and one or more Suppliers, including formal terms and conditions of contract or the terms stated on a Council Purchase Order.
Contract Management	The process and approach taken to implement, monitor and review what is being provided under the contract to ensure what has been agreed is being provided to the required standards and all parties to the contract are meeting their obligations.
Contract Procedures	The rules and procedures in place to ensure the Council is compliant with legislation, fair and accountable in its dealings with economic operators and obtains value for money.
Contract Value	The estimated or actual price of the Contract to be awarded.
Contracting Authority	A public authority or body governed by public law in whose name the Contract is awarded.
Contracts Finder	The government website on which the Council must publish all openly advertised opportunities, and all subsequently awarded Contracts, regardless of the route to market, above £30,000 (inc. VAT).
Contracts Register	The register containing the information the Council is required to publish, under the Local Government Transparency Code, for all spend and Contracts entered into with a value that exceeds £5,000 (excl. VAT).

Term	Definition
Council	Torbay Council
Criteria	The standards against which a Supplier's Tender will be assessed.
DPS	Dynamic Purchasing System
Dynamic Market	Is a procedure available under the Procurement Act 2023 for above threshold goods, services, or works commonly available on the market and operated through a completely electronic system, which is open throughout its duration for the admission of economic operators.
Dynamic Purchasing System(s)	Is a procedure available under the Public Contracts Regulations 2015 for contracts for goods, services or works commonly available on the market and operated through a completely electronic system, which is open throughout its duration for the admission of economic operators.
Economic Operator	The generic term used in the Regulations to cover a contractor, provider, supplier, service provider, applicant, bidder, candidate, tenderer, company, organisation or any other legal entity bidding for or awarded a Council Contract.
E-Tendering System	A web-based system used to facilitate a complete Tendering process, covering advertising, issuing and receiving Tender related information, assessment and Contract award.
Find a Tender Service	The government website on which the Council must advertise all opportunities above Threshold and publish details of the subsequently awarded Contracts.
Formal Request for Quote	Quote process undertaken using the relevant Council Tender templates.
Framework Agreement(s)	An agreement between one or more contracting authorities and one or more Suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period.
Goods	The purchase, lease, rental or hire purchase (with or without an option to buy) of goods, supplies or products, which may also include as an incidental, the putting on site or installation of the product.
GPA	World Trade Agreement on Government Procurement
Health Care Services (Provider Selection Regime) Regulations 2023	The rules for procuring health care services in England by organisations termed relevant authorities. For the purposes of the regulations relevant authorities are: • NHS England; • integrated care boards (ICBs);

Term	Definition
	• NHS trusts and NHS foundation trusts; • local authorities and combined authorities. The Health Care Services (Provider Selection Regime) Regulations 2023 (legislation.gov.uk)
Informal Request for Quote	Quote process undertaken without the need to use Council Tender templates.
JCT	Joint Contracts Tribunal
JCT Contract	A nationally recognised suite of construction contracts developed and provided by the Joint Contracts Tribunal.
Light Touch	The regime under which certain above Threshold social and other specific services may be procured.
Local Business, SME or VCSE	A business, SME or VCSE that is located and operated from within the Torbay local authority boundary, i.e. postcodes TQ1 to TQ5. Or where, there is no such organisation within the Torbay local authority boundary, one that is located and operated from within Teignbridge or South Hams district councils' boundaries, i.e. postcodes TQ6 to TQ14
Monitoring Officer	The statutory officer responsible for matters relating to the conduct of Councillors and officers, the operation of the Council's Constitution and reporting on matters they believe to be illegal or amount to maladministration.
National Procurement Policy Statement (NPPS)	Guidance from Cabinet Office, setting out the strategic priorities for public procurement and how contracting authorities can support their delivery. National_Procurement_Policy_Statement.pdf (publishing.service.gov.uk)
National Procurement Strategy (NPS) for Local Government in England	Sets out the ambition of the sector, including guidance and a roadmap to improvement and innovation. This strategy promotes: • adding value; • fulfilling our social value priorities through procurement; • building even greater connections and partnerships locally, across the public sector, with suppliers and the voluntary sector; • attracting, developing and retaining talent; • exploiting data and technology; • effective contract, supplier relationship and supply chain management; and • embracing public procurement transformation and innovation, including making procurement easier for bidders.

Term	Definition
NEC	New Engineering Contract.
NEC Contract	A nationally recognised suite of engineering and construction contracts created by the UK Institution of Civil Engineers.
Officer Scheme of Delegation	A framework that confers powers to conduct an authority's executive functions on chief officers and certain other designated officers, setting out the arrangements for the delegation of authority to officers to carry out the Council's various functions.
Other Applicable Legislation	Primary and secondary legislation and regulations relevant to public procurement, this includes but is not limited to: • Bribery Act 2010; • Children Act 2014; • Contract (Rights of Third Parties) Act 1999 • Data Protection Act 2018 and UK General Data Protection Regulation; • Fraud Act 2006; • Freedom of Information Act 2000; • Health and Safety at Work etc. Act 1974; • Health and Care Act 2022; • Human Rights Act 1998; • Insolvency Act 1986; • Intermediaries Legislation (IR 35); • Local Government Transparency Code 2015; • Modern Slavery Act 2015; • Prevent Duty; • Prevention of Corruption Act 1906; • Public Bodies Corrupt Practices Act 1889; • Public Sector Equality Duty; • Public Services (Social Value) Act 2012; • Transfer of Undertakings (Protection of Employment) Regulations 2006.
Participation	The process by which Suppliers are selected to move forward to the next stage of the Procurement, in accordance with the criteria listed in the Regulations.
Participation Questionnaire	The questionnaire completed by Suppliers to set out their legal, economic and financial standing, capacity and capability to fulfill the requirements of the Contract.
Procedures	These Contract Procedures.
Tender Document(s)	The documents issued by the Council, setting out the rules for the Procurement together with the documents submitted by Suppliers containing their Tender response. Which may be in the form of an official Tender pack or written instructions within an email or letter to Suppliers.

Term	Definition
Procurement(s)	1. The award, entry into and management of a contract, including: • any step taken for the purpose of awarding, entering into or managing the contract; • all or part of the procurement; and • termination of the procurement before award of the contract, regardless of whether the procurement is covered under the Regulations or not. And / or 2. Steps taken for the purpose of awarding, entering into or managing a contract include, but are not limited to: • pre-tender planning and decision making; • market engagement; • the procurement procedure itself; • contract issuing and signing; • mobilisation/implementation; • contract and performance management; • exit management; and • de-commissioning.
Procurement Act 2023	The rules, effective from 24 February 2025, for procuring public contracts for the provision of goods, services or works. Procurement Act 2023
Procurement Regulations 2024	Secondary legislation to the Procurement Act 2023, effective from 24 February 2025 The Procurement Regulations 2024
Procurement Lead Officer	The officer who is leading on the provision of procurement advice and support for a Procurement.
Procurement Playbooks	Guidance which sets out how government departments should approach outsourcing projects and outlines the government's expectations on how contracting authorities and suppliers engage with each other. The playbooks encompass the following: • sourcing; • construction; • consultancy; • digital, data, and technology.
Procurement Policy Note (PPN)	A document that sets out information and guidance for public bodies on procurement regulations and policies issued by the UK and devolved governments.
Tender Template(s)	The proforma Tender Document(s) for completion by the contracting department and procurement lead officer.
Provider Selection Regime	Health Care Services (Provider Selection Regime) Regulations 2023.

Term	Definition
PSR	Provider Selection Regime
Public Contracts Regulations 2015	The legislation incorporated into English law concerning the Procurement by public authorities of public goods, services and works Contracts, as amended from time to time. The Public Contracts Regulations 2015 (legislation.gov.uk)
Public Service Mutual	An organisation which: • has left the public sector; • continues to deliver public services and aims to have a positive social impact; • has a significant degree of staff influence or control in the way it is run.
Regulation 8 – Public Contracts Regulations 2015	Public contracts, or design contests, for the principal purpose of permitting contracting authorities to provide or exploit public communications networks or to provide to the public one or more electronic communications services.
Regulation 9 – Public Contracts Regulations 2015	Public contracts awarded, and design contests organised, pursuant to international rules.
Regulation 10 – Concession Contracts Regulations 2016	Concession contracts awarded to a contracting authority or a utility or to an association of such contracting authorities or utilities on the basis of an exclusive right.
Regulation 10 – Public Contracts Regulations 2015	(a) acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or which concern interests in or rights over any of them; (b) (i) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, which are awarded by audiovisual or radio media service providers, or (ii) broadcasting time or programme provision that are awarded to audiovisual or radio media service providers; (c) arbitration or conciliation services; (d) (i) legal representation of a client by a lawyer in an arbitration or conciliation or judicial proceedings before a court, tribunal or public authorities, or (ii) legal advice given in preparation of proceedings referred to in paragraph (i) or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings; (e) (i) financial services in connection with the issue, sale, purchase or transfer of securities, (ii) central bank services, or (iii) operations conducted with the European Financial Stability Facility and the European Stability Mechanism; (f) loans; (g) employment contracts;

Term	Definition
	(h) civil defence, civil protection and danger prevention services provided by not-for-profit organisations, except patient transport services; (i) public passenger transport services by rail or metro; (j) political campaign services when awarded by a political party in the context of an election campaign.
Regulation 11 – Concession Contracts Regulations 2016	Concession contracts for the principal purpose of permitting contracting authorities to provide or exploit public communications networks, or to provide to the public one or more electronic communication services.
Regulation 11 – Public Contracts Regulations 2015	Service contracts awarded on the basis of an exclusive right.
Regulation 12 – Concession Contracts Regulations 2016	(a) concession contracts awarded to provide or operate fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; (b) concession contracts awarded to supply drinking water to such networks; (c) concession contracts for either or both of the following: (i) hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations, or (ii) the disposal or treatment of sewage, when the contracts are connected with an activity referred to in paragraph (a) or (b).
Regulation 12 – Public Contracts Regulations 2015	Award of contracts to controlled persons; award of contracts where there is joint control and contracts which establish or implement co-operation between contracting authorities.
Regulation 13 – Concession Contracts Regulations 2016	Concession contracts awarded: (a) by a utility to an affiliated undertaking, or (b) by a joint venture, formed exclusively by a number of utilities for the purpose of conducting activities listed in Schedule 2, to an affiliated undertaking of one of its members; where the conditions set out in regulation 13 are met.
Regulation 14 – Concession Contracts Regulations 2016	Concession contracts awarded to a joint venture or to a utility forming part of a joint venture.
Regulation 16 – Concession Contracts Regulations 2016	Concession contracts awarded by utilities where it has been established that the activity is directly exposed to competition in accordance with regulation 34(2) of the Utilities Contracts Regulations 2016.

Term	Definition
Regulation 17 – Public Contracts Regulations 2015	Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules.
Regulation 24 – Public Contracts Regulations 2015	Conflicts of interest – contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
Regulations	The Procurement Act 2023, the Procurement Regulations 2024 and other applicable secondary legislation - for goods, services and works contracts procured on or after 24 February 2025. The Health Care Services (Provider Selection Regime) Regulations 2023 – for relevant health care services procured on or after 1 January 2024 The Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and/or Utilities Contract Regulations 2016. For goods, services and works contracts procured before 24 February 2025 or relevant health and care services procured before 1 January 2024.
Section 151 Officer	The statutory officer responsible for the arrangements for the proper administration of the Council's financial affairs.
Services	The provision of any type of service other than those which fall within the definition of a works Contract or a social and other specific services Contract.
Services Concessions	The provision and management of services (other than the execution of works) for financial interest, giving the Supplier the right to exploit the services with or without payment.
SME	Small and medium enterprise.
Social and Other Specific Services	Specific services which can be subject to Light Touch Procurement.
Social Enterprise	A business which trades for a social or environmental purpose.
Sub-Criteria	The criteria which sit below the main criteria, against which the Supplier's Tender will be assessed.
Subsidy	Where a public authority provides support to an enterprise that gives them an economic advantage, meaning equivalent support could not have been obtained on commercial terms.
Supplier	The generic term to cover a contractor, provider, supplier, service provider, applicant, bidder, candidate, tenderer,

Term	Definition
	company, organisation or any other legal entity who may or does Tender for or is awarded a Contract.
Tender(s)	An invitation to bid for a Contract or Supplier's response to that invitation.
Threshold(s)	The contract value thresholds (inclusive of VAT) set by the UK government above which the Regulations apply, as amended every two years, covering: • goods • light touch regime services • services • services and works concessions • works
Threshold Values	Means the same as Threshold(s).
Utility	An entity which pursues one of the following activities and is a contracting authority or public undertaking or is not a contracting authority or public undertaking but whose activities include and operate on the basis of special or exclusive rights: • gas and heat; • electricity; • water; • transport services; • ports and airports; • postal services; and • extraction of gas, oil, coal, or other solid fuels.
Utilities Contracts Regulations 2016	The legislation incorporated into English law concerning the Procurement by utilities of public goods, services and works Contracts, as amended from time to time. The Utilities Contracts Regulations 2016 (legislation.gov.uk)
Verifier(s)	The officer(s) authorised to unseal electronic Tenders.
VCSE	Voluntary and community sector enterprise.
Waiver Procedure	The procedure set out in the Commercial Policy governing the exemption of the application of these Procedures.
Weighting	A score which may be allocated to individual criteria and/or sub-criteria to denote their level of importance in comparison to other criteria.
Works	The execution or design and execution of construction, civil engineering, demolition, building installation and building completion works.

Term	Definition
Works Concessions	The execution of works for financial interest, giving the Supplier the right to exploit the works with or without payment.
World Trade Agreement on Government Procurement (GPA)	A plurilateral agreement under the auspices of the World Trade Organization (WTO) which regulates the procurement of goods and services by the public authorities of the parties to the agreement, based on the principles of openness, transparency and non-discrimination. Government Procurement Agreement [WP for Windows Docs] (wto.org)

Code of Conduct for Members

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Definitions

In this Code –

> *"interest or interests"* have the meanings set out in Part 2 of this Code
>
> *"relevant person"* means:
>
> - you or
> - your spouse or civil partner, or
> - a person with whom you are living as husband and wife or as if they were civil partners

"relevant period" means a period of 12 months ending with the date on which you notified the Monitoring Office of an interest

"*meeting"* means any meeting of –

- the Council;
- the Cabinet;
- any of the Council's or the Cabinet's, Committees, Sub-Committees, Joint Committees, Joint Sub-committees or Area committees;

"Member" includes a co-opted member

"Regulations" means the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464)

"sensitive information" has the meaning given to it in paragraph 7.4

CODE OF CONDUCT

PART 1 GENERAL PROVISIONS

1. Public Duty and Interests: An introduction

1.1 This Code applies to you as a Member or a Co-opted Member of the Council of the Borough of Torbay ('the Council'). For the purposes of this code references to 'Member' or 'Member of the Council' include Co-opted members unless otherwise stated. A Co-opted Member means a person who is not a member of the authority but who:

(a) is a member of any committee or sub-committee of the authority, or
(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

1.2 When acting in your capacity as a Member of the Council, you should have regard to the Principles of Public Life namely, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Personal judgment, Respect for others, Duty to uphold the law, Stewardship and Leadership. An explanation of what compliance with each of these principles requires is included at Appendix A.

2. Purpose of the Code of Conduct

2.1 The purpose of this Code of Conduct is to assist you, as a Member, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow members, officers and the reputation of the Council. It sets out general principles of conduct expected of all Members and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of elected Member and local government.

2.2 As a Member you must promote and support high standards of conduct when serving in your public post. You should exhibit the principles in your own behaviour, actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2.3 You are accountable to the public for your decisions and actions, whilst you may be strongly influenced by the views of others, it is your responsibility alone to decide what view to take on any issue which Members have to decide. You must not do anything as a Member which you could not justify to the public.

2.4 It is your responsibility to comply with the provisions of this Code.

3. Application of the Code of Conduct

3.1 This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

3.2 You must comply with this Code whenever you are acting in your capacity as a Member, when:

(a) you are engaged on the business of the Council; or

(b) you behave so as to give a reasonable person the impression that you are acting as a representative of the Council or in your capacity as a Member.

3.3 The Code applies to all forms of communication and interaction, including:

• at face-to-face meetings;

• at virtual or telephone meetings;

• in written communication;

• in verbal communication;

• in non-verbal communication; and

• in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a Member.

3.4 The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from the Monitoring Officer on any matters that may relate to the Code of Conduct.

4. Minimum Standards of Member Conduct

4.1 This section sets out your obligations, which are the minimum standards of conduct required of you as a Member. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

4.2 General Conduct:

You **must**:

(a) treat others with courtesy and respect.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Member, you can express, challenge, criticise and

disagree with views, ideas, opinions and policies in a robust but civil manner. However, you must not subject individuals, groups of people or organisations (including fellow Members, officers and/or their relatives) to personal remarks, comments or attacks.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in Members. Consider your own language and attitudes towards others, and think before making comments. Are you being fair? Are you being respectful? Are you behaving like a good role model? What may be acceptable to you may be offensive to others.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow Members, where action could then be taken under this Member Code of Conduct, and local authority employees, where concerns should be raised in line with the Members and Officers Local Protocol.

(b) be truthful and declare any interests, whether disclosable pecuniary or personal, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out at Part 2 of this Code;

(c) when reaching decisions on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any relevant advice provided to you by an officer of the Council; and

(d) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the Council (as set out at Appendix C).

4.3 As a Member:

You **must not**:

(a) bully or harass any person

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include

repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

(b) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;

Your position as a member of the Council provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

(d) misuse Council resources or when using the resources of the Council ensure that such resources are not used improperly for political purposes (including party political purposes), business or personal gain and that any use is in accordance with the Council's reasonable requirements and in accordance with its Policies. See also Appendix F which relates to Fraud Reporting and Prevention.

As a Member you may be provided with resources and facilities by the Council to assist you in carrying out your duties as a member.

Examples may include:

- office support;
- equipment such as phones, and IT equipment;
- transport; and
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a member more effectively.

(e) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at Appendix B);

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Members have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

(f) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –

(i) you have the consent of a person authorised to give it;
(ii) you are required by law to do so;
(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
(iv) the disclosure is –
(A) in the public interest; and
(B) made in good faith; and
(C) in compliance with the reasonable requirements of the Council;

(g) prevent another person from gaining access to information to which that person is entitled by law.

The Council must operate in an open and transparent manner, and the Council's proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the Council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

As a Member, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other members and/or the Council and may lower the public's confidence in your or the Council's ability to discharge your/its functions. For example, behaviour

that is considered dishonest and/or deceitful can bring the Council into disrepute.

You are able to hold the Council and members to account and are able to constructively challenge and express concern about decisions and processes undertaken by the Council whilst continuing to adhere to other aspects of this Code of Conduct.

5. Complying with the Code of Conduct

5.1 As a Member of Torbay Council:

- You will undertake Code of Conduct training as required by Torbay Council.
- You will co-operate with any Code of Conduct investigation and/or determination.
- You will not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.
- You are required to respond to any sanction imposed on you following a finding that you have breached the Code of Conduct.

5.2 It is extremely important that as a Member of Torbay Council you demonstrate high standards. A Member's actions are open to scrutiny, it is therefore important that you do not undermine public trust in the Council or its governance processes. If you do not understand or are concerned about the Council's processes in handling a complaint you should raise the issue with the Monitoring Officer.

PART 2 INTERESTS

6. Registration of Interests

6.1 You must, within 28 days of—

(a) this Code being adopted by, or applied to, the Council; or

(b) your taking office as a Member or Co-opted Member of the Council,

whichever is the later, and annually thereafter, provide written notification to the Council's Monitoring Officer of:

(i) any disclosable pecuniary interest as defined by Regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife; and

(ii) any other personal interest as may be defined by the Council from time to time;

which will be recorded in the Council's Register of Members' Interests and made available for public inspection including on the Council's website at: http://www.torbay.gov.uk/DemocraticServices/mgMemberIndex.aspx?bcr=1

6.2 Within 28 days of becoming aware of any new interest or change to any interest already registered, you must register details of that new interest or change by providing written notification to the Council's Monitoring Officer.

6.3 Whether or not an interest within paragraphs 7.1.and 7.2 below has been entered onto the Council's register, you must disclose any interest to a meeting at which you are present in any matter being considered, in accordance with paragraph 8 below, unless that matter is 'sensitive information'.

6.4 Following any disclosure of an interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

6.5 In relation to disclosable pecuniary interests, in this Part of the Code the expressions in the left hand column below have the meanings attributed to them in the right hand column:

"body in which the relevant person has a beneficial interest"	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director or in the securities of which the relevant person has a beneficial interest
"director"	includes a member of the committee of management of an industrial and provident society
"land"	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income
"relevant authority"	means the authority of which you are a member
"relevant person"	means you, your spouse or civil partner, a person with whom you are living with as husband and wife or a person with whom you are living with as if you are civil partners
"securities"	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

7. The interests you must register are:

7.1 those disclosable pecuniary interests defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) as set out below, namely:

(a) any employment, office, trade, profession or vocation carried on for profit or gain by you or a relevant person;

(b) any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your expenses, including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;

(c) any contract which is made between you or, so far as you are aware, a relevant person (as defined at Para 2 above) (in which the relevant person has a beneficial interest) and the Council:

(1) under which goods or services are to be provided or works are to be executed; and
(2) which has not been fully discharged

(d) any beneficial interest in land held by you, or so far as you are aware, a relevant person which is within the administrative area of the Council;

(e) any licence (alone or jointly with others) to occupy land in the administrative area of the Council for a month or longer

(f) any tenancy where (to your knowledge):

(1) the landlord is the Council; and
(2) the tenant is a body in which you or, so far as you are aware, a relevant person has a beneficial interest.

(g) any beneficial interest that you or, so far as you are aware, a relevant person has in securities of a body where:

(1) that body (to your knowledge) has a place of business or land in the administrative area of the Council and

(2) either:

(A) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(B) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

7.2 In addition to the disclosable pecuniary interests prescribed by the Regulations this Code also requires that you **must** register the following interests:

(a) your membership of any body:
(1) to which you have been appointed by the Council
(2) which exercises functions of a public nature directed to charitable purposes; or
(3) whose principal purposes include influence of public opinion or policy

(b) your membership of any political party or trade union.

7.3 In addition to those interests listed at 7.1 and 7.2 above which you are required to registered, you **may** wish also to declare membership of any body which, in your view, might create a conflict of interest in carrying out your duties as a Member, such as membership of the Freemasons or any similar body.

7.4 Where the Council's Monitoring Officer agrees that any information relating to your interests is *"sensitive information*" namely information whose availability for inspection by the public is likely to create a serious risk that any person may be subjected to violence or intimidation, you need not include that information when registering that interest, or, as the case may be, any change to that interest.

7.5 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer sensitive information, notify the Council's Monitoring Officer asking that the information be included in the Council's Register of Members' Interests.

8. Declaration of Interests

8.1 Unless a dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function which relates to or is likely to affect any matter in which you have a disclosable pecuniary interest as defined by Regulations referred to at Para 6(b)(i) .

8.2 Where you have any interest in business of the Council and you attend a meeting at which that business is to be considered, you must:

(a) disclose to that meeting the existence and nature of that interest but where your interest is sensitive you are not required to disclose the nature of the interest but merely the fact that you have an interest in the matter concerned;

(b) disclose any interest, no later than the commencement of the consideration of the business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;

(c) where you have a disclosable pecuniary interest, withdraw from the room or chamber where a meeting considering the business is being held at the commencement of the consideration of that business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;

(d) not seek to influence improperly any decision about that business;

unless you have obtained a dispensation from the Council's Monitoring Officer.

8.3 Members should note that the following is a criminal offence:

(a) failing to notify the authority's Monitoring Officer of any disclosable pecuniary interests which the person has at the time when the notification is given, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority,

(b) failing to disclose a disclosable pecuniary interest to a meeting which has not been previously notified to the monitoring officer and if that interest is not the subject of a pending notification, failing to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure

(c) participating, or participating further, in any discussion of a matter in which a member has a disclosable pecuniary interest

(d) participating in any vote, or further vote, taken on the matter at the meeting in which a member has a disclosable pecuniary interest

8.4 You are also required to consider, before taking any decision, whether there is potential for legal challenge on the basis of you having any apparent bias, pre-determination or pre-disposition associated with the decision. The Local Code of Good Practice – Members and Council Officers Involved in the Planning Process provides further guidance on bias, pre-determination and pre-disposition.

Annex 1

MEMBERS' CODE OF CONDUCT
GENERAL NOTICE OF REGISTERABLE INTERESTS

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

I, _____

being a Member/Co-opted Member of the Council of the Borough of Torbay,

give notice below of those interests which I am required to declare under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and Torbay Council's Code of Conduct:

I understand that in so doing I must declare any interest of my spouse or civil partner or of any person with whom I am living as a husband or wife and acknowledge that all references to 'you' below include reference to my spouse or civil partner or of any person with whom I am living as a husband or wife.

1. Employment, Office, Trade, Profession or Vocation **Please give details of (i) every employment, job, trade, business or vocation you have, for which you receive any benefit or gain (i.e. profit, salary or benefit in kind) including a short description of the activity e.g. 'Accountant' or 'Farmer' and (ii) the name of any employer or body, firm or company which you own or in which you have any beneficial interest.**	
Description of employment, job, vocation, trade or business	
Name of Employer, body, firm or company by which you are employed or in which you are a partner or a remunerated Director in which you have a beneficial interest	
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

2. Sponsorship **Please give details of any person or body (other than the Council) who has made any payment to you in respect of your election or any expenses you have incurred in carrying out your duties as a Councillor.**
3. Securities: Interests in Companies **Please give details of body which has a place of business or owns land in the Council's area and in which you have a beneficial interest (a shareholding) of more than £25,000 (nominal value) or more than 1/100th of the total share issue of that body (whichever is the lower) <u>or</u> if there is more than one class of share, the total nominal value of shares in any class of that body of more than 1/100th of the total shares of that class** ***Note: It is not necessary to declare the nature or size of the holding, simply the name of the company or other body.***

4. Contracts: for Goods, Works or Services with the Council **Please give details of any current, existing contracts for goods, works or services between the Council and you or any body, firm or company by which you are employed or which you own or in which you have a beneficial interest, as referred to at 3 above.**
5. Landholdings and Licenses in the Area **Please give the address or other description (sufficient to identify the location) of any land or property in the Council's area in which you have a beneficial interest, indicating whether you are the owner, lessee or tenant, including land in which you may have a licence, alone or with others, to occupy for a period of one month or longer.** **You must include the land and house you live in and for example an allotment you own or use.**

6. Corporate Tenancies: Land leased from the Council **Please give the address or other description (sufficient to identify the location) of any land leased or licensed from the Council by a you or any body firm or company by which you are employed or which you own or in which you have a beneficial interest (specified at 3 above).**	
7. Membership of Other Bodies **Please give details of your membership of, or any position of general control or management, of any bodies in the categories listed below.**	
Any Body or Organisation to which you have been appointed or nominated by the Council as its representative	
Any body which exercises functions of a public nature directed to charitable purposes *(e.g., an Industrial and Provident Society or Charitable Body*	

Any Body whose principle purpose is to influence public opinion or policy or which, in your view, might create a conflict of interest in carrying out their duties as a Councillor. *(e.g. Political Party; Trade Union, Professional Association, Local Action Forum, Civic Society or Interest Group (e.g. National Trust; RSPB: Greenpeace or membership of the Freemasons or similar body)*	

DECLARATION

I recognise that if I fail to comply with the Code of Conduct for Members of the Council of the Borough of Torbay or:

(i) omit any information that should be included in this Notice;
(ii) give false or misleading information; or
(iii) do not tell the Council of any changes to this Notice or new interests I acquire,

that may be a criminal offence and/or the matter may be referred for investigation.

Signed : ……..

FOR OFFICE USE ONLY

Received: …… Update ……

Appendix A

General principles of public life

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Appendix B

Public sector equality duty (extract from s149 of the Equality Act 2010)

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the Equality Act 2010];

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Appendix C

Local Authority Code of Publicity

Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.

2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newssheets and maintenance of websites – including the hosting of material which is created by third parties.

3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:-

• be lawful

• be cost effective

• be objective

• be even-handed

• be appropriate

• have regard to equality and diversity

• be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.

6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.

7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.

8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.

9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.

11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.

12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.

13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.

14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.

16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.

17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.

18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.

20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.

21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.

22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.

23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.

24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as the leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.

25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.

27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.

28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.

29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.

30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newssheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.

32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

Appendix D

Interests and Outside Organisations

You may be appointed by the Council onto an organisation (referred to as an 'outside organisation') in one of two roles:-

1. **General member:** where you take no part in the management or governance of the outside organisation and your role is only to attend and vote at general meetings of the outside organisation on behalf of the Council; or

2. **Full member:** Where you are appointed as a member of the board of directors; managing trustees or management committee and therefore take part in the management and governance of the outside organisation.

Things you need to do:

If you are appointed onto an outside organisation you must ensure that it is included in your register of interests within 28 days of your appointment. It is your responsibility to ensure that this is done.

Declaring interests

Where you are as a 'general member' (appointed only to attend and vote at general meetings of the outside organisation on behalf of the Council) it is unlikely you will have a disclosable pecuniary interest in matters arising at any of the Council's meetings which may affect that outside organisation, although you will have a personal interest.

Where you are appointed as a 'full member' (appointed member of the board of directors; a managing trustee or on to the management committee) of an outside organisation you are likely to have a disclosable pecuniary interest where an issue being discussed at any of the Council's meetings which affects the financial interests of that outside organisation.

In either capacity when you are appointed to an outside organisation you must comply with the Members' Code of Conduct in so far as it does not conflict with any lawful obligations to which the outside organisation may be subject.

Conflicts of interest

Where you are a 'full member' (appointed as a member of the board of directors; a managing trustee or on to the management committee of an organisation) you may have duties that you owe to that outside organisation as well as the duties you owe to the Council. For example the duties of company directors are now expressly set out in the Companies Act 2006.

In the event of a conflict of those duties you must balance the duties you owe to the Council and to that of the outside organisation and make your decision accordingly. If you are not sure of your position you should seek legal advice from the Council's Monitoring Officer or a solicitor.

If the outside organisation is a company, its Articles of Association will have details of how conflicts of interests should be dealt with and it is possible that a charity or other organisation that is not a company will have a trust deed or constitution that gives similar details. If you comply with these rules when you have a conflict of interest, you are unlikely to be in breach of your duties to that outside organisation. If you are not sure of your position you should seek legal advice from the Council's Monitoring Officer or a solicitor.

Joint Statement of Conduct by Elected Members

Adopted by Annual Council, May 2022

Introduction

The Jo Cox Foundation and the Committee for Standards in Public Life have prepared the Joint Statement of Conduct, a high-level statement of principle which all political parties in Westminster have signed up to. The Joint Standard seeks to agree on a responsible framework for legitimate public debate and to help protect candidates during an election campaign. It sits alongside party codes of conduct and asks for minimum standards of behaviours expected at all times.

At a local level, Torbay Council also supports and expects high levels of conduct and has adopted the following Joint Statement for conduct of its members to sit alongside and support the Members' Code of Conduct and Local Protocols.

The Joint Statement of Conduct

1. Representative democracy is a central and valued characteristic of our way of life. We believe it is in the interests of us all for Parliament and Local Authority's to reflect the diverse population it serves so that decisions that impact the public reflect the realities of life in the UK. In recent years, intimidation (see Annex A) experienced by Parliamentary candidates and others in public life has increased and has threatened the diversity, integrity, and vibrancy of our democracy.

2. This joint statement on conduct of Councillors (the Statement), Members' Code of Conduct and Local Protocols sets out the minimum standards of behaviour we expect from Councillors at all times.

3. The Seven Principles of Public Life (the Nolan Principles) - selflessness, integrity, objectivity, accountability, openness, honesty and leadership - have long been the basis for ensuring high standards in public life. This is the context for the behaviours set out below.

4. Councillors will aspire to:

   a) take responsibility for setting an appropriate tone for campaigning and communication;

   b) lead by example to encourage and foster constructive democratic debate and tolerance of other points of view; and

   c) promote and defend the dignity of others, including political opponents, treating all people with courtesy and respect.

5. As a minimum, Councillors will not engage in intimidation by:

   a) using or threatening violence or other unlawful force;

   b) damaging property or making threats to damage property;

   c) engaging in bullying, harassment or victimisation, or unlawfully discriminating against another person or group;

   d) using abusive or threatening words or behaviour, including the use of hateful or sexualised language or imagery;

   e) making vexatious or malicious allegations of illegal or improper conduct; or

   f) using violent metaphors or allusions to violence.

6. Councillors are expected to challenge unacceptable behaviour wherever it occurs.

7. Behaviour that falls within the unacceptable behaviour listed in this Statement will be dealt with under Torbay Council's Members Code of Conduct.

8. In some cases, including but not limited to offences against the person and damage to property, as well as credible threats of violence, the behaviour may be illegal. We will refer any breach of this Statement which appears to break the criminal law to the police

> This statement was adopted by Annual Council on 17 May 2022 and, on behalf of all Torbay's Councillors, we as the Council's political group leaders hereby sign this statement to demonstrate our joint commitment:







Councillor Steve Darling	**Councillor David Thomas**	**Councillor Robert Loxton**
Leader Liberal Democrat Group	Leader Conservative Group	Leader Independent Group

Annex A

What is intimidatory behaviour?

> The 2017 Report of the Committee on Standards in Public Life, Intimidation in Public Life, interpreted intimidatory behaviour as: 'words and/or behaviour intended or likely to block or deter participation, which could reasonably lead to an individual wanting to withdraw from public life.'

1. Intimidation can include physical violence, threats of violence, damage to property, and abusive online and offline communications, amongst other behaviour. Sometimes, the collective impact of a number of individual actions can also be intimidatory, for example, co-ordinated social media attacks. A clear finding of Intimidation in Public Life is that intimidation is disproportionately likely to be directed towards women, those from ethnic and religious minorities, and LGBT candidates.

2. Robust political disagreement is part of the democratic process; highly personalised attacks are not. Intimidatory actions are not a way to apply legitimate political pressure. Instead, they are intended and likely to cause an individual to withdraw from a public space, including social media, public events, or from public life altogether. This can have the effect of limiting freedom of expression.

Appendix F

Reporting Suspected Fraud and Suspected Money Laundering

All members are expected to report any instances of suspected money laundering immediately.

This includes any activities that appear to be dishonest, illegal or unethical.

Members must comply with all applicable money laundering regulations, policies and processes designed to prevent money laundering.

This includes understanding and adhering to the procedures for identifying and reporting suspicious activity as outlined in the money laundering process available on the intranet.

All members are expected to report any instances of suspected fraud immediately.

Reports of suspected fraud or money laundering should be made to Corporate Fraud using the reporting fraud form available at Torbay.gov.uk. All reports are treated as confidential.

Members must not disclose a report of fraud or money laundering to anyone, especially the suspected person.

Members must not investigate fraud or money laundering themselves as they could find themselves guilty of an offence and will be in breach of policy.

Preventing Fraud

Torbay Council is committed to protecting the public purse from fraud and impropriety.

All employees have an obligation to prevent fraud. Once fraud has occurred, all employees have an obligation to report fraud to the corporate fraud team. They are not authorised to investigate the fraud themselves.

All managers have a responsibility to capture and maintain a fraud risk assessment for the services their teams provide. This is to aide their responsibility to ensure that the risk from fraud is mitigated.

All members have an obligation to prevent fraud and must promote and support high standards of conduct when serving in their public post. They should exhibit these principles in their own behaviour, actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Each employee has a responsibility to advise their manager, if they identify, through their work, potential for fraud to occur.

Managers have a responsibility to ensure if their team raise a concern of process weakness, it is captured in their fraud risk assessment.

All managers must ensure any application forms for their service have an up-to-date fraud statement and declaration section. You can find guidance on the Intranet.

Internal Audit and Corporate Fraud play a preventative role in reviewing and assessing to ensure that systems and procedures prevent and detect fraud. The Audit and/or Fraud team investigate all cases of suspected irregularity.

All employees and members are required to engage with this process.

Employees Code of Conduct

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Appendix 1: Reporting Suspected Fraud and Suspected Money Laundering

Torbay Council

Code of Conduct for Employees

1. Introduction and interpretation

1.1 The public is entitled to expect high standards of conduct from all employees of Torbay Council. This Code provides guidance as to the standard of conduct which the Council expects of its employees to assist them in their day to day work. Any breach of the Code may be investigated under the Council's disciplinary procedure and action taken where appropriate.

1.2 The provisions of this Code of Conduct for Employees are intended to be read consistently with the Principals of Public Life governing the Code of Conduct for Members. Not all of these principals are relevant to officers. Those which are relevant are set out below:

Selflessness

Officers must serve only the public interest and must never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

Officers must not place themselves in situations where their honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour. Officers must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. Officers must not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends and they must declare any such interests.

Objectivity

Officers must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Officers are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Respect for Others

Officers must promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They must respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

Officers must uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

Officers must use the authority's resources prudently and in accordance with the law.

Leadership

Officers must exhibit all the above principles in their own behaviour and actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

1.3 The Council expects high standards from employees because:

- Council services can affect the health, wealth and well-being of local people.
- The Council is subject to democratic control and is accountable to the electorate.
- Local people fund Council spending and take an interest in the way money is spent.

2. Status of the Code

2.1 This Code sets out the minimum standards that apply and lays down guidelines that will help improve standards and protect employees from misunderstandings or criticism. It supplements more detailed provisions in defined areas including terms and conditions of employment, Council policies and the Council's procedure rules.

3. Who the Code is aimed at?

3.1 Inevitably some of the issues covered by the Code will affect senior managerial and professional employees more than it will others.

3.2 The Code is intended to cover all employees under any contract of employment within the Council including office holders such as Registrars.

3.3 Any employee serving as a representative of the Council:

- As a Director of a Company; or
- As a Trustee; or
- On the Management Company of a voluntary organisation,

will be expected to abide by the provisions of this Code when acting in such a capacity unless to do so would cause a conflict of interest with their role as a director, trustee or management committee member.

Any employee who believes that such a conflict exists or may arise in the future must contact the Head of Human Resources.

4. Service Standards

4.1 Council employees must give the highest possible standard of service to the public and, where it is part of their duties, provide appropriate advice to elected Members and fellow employees with impartiality.

4.2 Employees will be expected through agreed procedures and without fear of recrimination to bring to the attention of the appropriate level of management any deficiency in the provision of service.

4.3 Employees who have serious and genuine concerns relating to impropriety, breach of procedure, unlawfulness or maladministration must be able to come forward and register their concerns without fear of harassment or victimisation.

4.4 Employees must show commitment to demonstrating Torbay Council's agreed Core Values - forward thinking, people orientated and adaptable always with integrity and ensure that these values are an integral part of carrying out their job role. The Core Values are available on the intranet or by contacting Human Resources.

4.5 Employees' conduct is expected to reflect the standards set out in this Code at all times, irrespective of whether this is within working hours or not. Where an employee engages in inappropriate conduct and risks their integrity and/or the reputation of the Council depending upon the nature and severity of the issue, this could result in disciplinary action and/or criminal proceedings being brought against them.

4.6 This is the reason why the Council maintains a range of policies and procedures to help ensure the highest standards of conduct are practised by its employees by encouraging and enabling staff to pursue concerns within the Council rather than disregarding them or airing them publicly.

The most critical of these policy and procedure documents are:

- Financial Regulations and Contracts Procedures.
- Local Protocol on Member and Officer Relations.
- Local Protocol on gifts and hospitality.
- Whistleblowing policy.
- Acceptable Behaviour Policy.
- Information Security Policies.
- Prevention of fraud and corruption policy and guidance.
- Disciplinary Policy.

5. Disclosure and use of information

5.1 The Council embraces the principal of open government and seeks to involve the public in the decision making process. Indeed the law requires that certain types of information must be available to members, auditors, government departments, service users and the public.

5.2 In certain circumstances employees may have a legal or professional duty to disclose information to a third party (for example in the course of legal proceedings).

5.3 However, some information is by necessity confidential and must not be disclosed e.g. commercially confidential information relating to tendering processes (Contract Procedures Section 40 sets out further requirements) and information which the Council, the Cabinet or any committee has determined as “exempt” information must not be disclosed to the public without the prior permission of the Monitoring Officer.

5.4 Employees must not prevent another person from gaining access to information which that person is entitled to by law. If in doubt as to whether or not specific information is disclosable, advice must be sought from the Council's **Information Compliance Team or the Council’s Data Protection Officer**. Any employee having custody of documents to which right of access applies commits an offence by obstructing that right.

5.5 Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor must they pass it on to others who may use it in such a way.

5.6 Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Authority must not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

6 Criminal Convictions

6.1 It is a condition of employment that employees must disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during the course of their employment. Failure to do so may result in disciplinary action being taken, as may the nature of the offence (depending upon its impact on your work) and this may result in your dismissal from Torbay Council's employment.

7 Political Neutrality

7.1 Employees must not do anything which compromises or is likely to compromise their own political impartiality or that of others who work for or on behalf of the Council. In particular, employees must:-

- Provide appropriate advice to all Councillors with impartiality.
- Serve the Council as a whole i.e. all Councillors and not just those of, for example, a particular political group.
- Observe the individual rights of all Councillors (e.g. to have access to relevant information).

7.2 Employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

7.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal and political opinions to interfere with their work.

7.4 Employees must not infringe the requirements of legislation not to publish any material which in whole or in part, appears to be designed to affect public support for a political party.

7.5 Political Assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set out in Paragraphs 7.1 to 7.4 above.

8. Relationships

COUNCILLORS:

8.1 Employees are responsible to the Council through their senior managers.

8.2 Some employees are required to give advice to Councillors and senior managers. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual

Councillors can damage the relationship and prove embarrassing to other employees and Councillors and must be avoided.

THE LOCAL COMMUNITY AND SERVICE USERS:

8.3 Employees must always remember their responsibilities to the community they serve and ensure courteous, respectful, efficient and impartial service delivery to all groups and individuals within that community as defined by the corporate aims and policies of the Council.

CONTRACTORS:

8.4 Employees must make known to their line manager all relationships they have of a business or private nature with external contractors or potential contractors. Orders and contracts must be awarded on merit by fair competition against other tenders and no special favours must be shown to potential contractors (particularly those run by, for example, friends, personal or business associates, spouses or relatives) in the tendering process. No part of the community should be discriminated against.

8.5 Pursuant to section 117 of the Local Government Act 1972, if it comes to the knowledge of an employee that a contract in which he/she has a **financial** interest, whether direct or indirect, has been or is proposed to be entered into, the employee must, as soon as practicable, give notice in writing of that interest to:-

(1) their line manager; and
(2) the Council's Chief Executive, in writing.

Failure to declare such an interest could constitute a criminal offence as well as a breach of this Code resulting in disciplinary action.

Employees are also required to follow the declaration of interest process for procurements as required under the Public Contracts Regulations 2015 and as set out in Contracts Procedures.

8.6 Employees must not seek or receive any gift or personal inducement in connection with the procurement of works, goods or services.

RELATIVES AND PARTNERS:

8.7 Employees must not be involved in decisions relating to partners, relatives or close friends. If it comes to an employee's attention that they are involved in any decision which could result in a particular advantage or disadvantage to a partner, relative or close friend, the employee must as soon as practicable, inform his or her line manager.

8.8 In the above paragraph 8.7:-

(a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, niece, nephew or the spouse or partner of any of the preceding persons; and
(b) "partner" above means a member of a couple who live together in an enduring family relationship; and
(c) "close friend" is to be given its normal every day meaning.

9. Appointments and Other Employment Matters

9.1 Employees involved in appointments must ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment based on anything other than the ability of the candidate to undertake the duties of the post. The Council's recruitment procedures are detailed in the Recruitment Toolkit and must be referred to. In order to avoid any possible accusation of bias, employees must not be involved in an appointment where they are related to an applicant or have a close personal relationship outside work with him or her.

9.2 Employees must not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close friend.

10. Applications

10.1 Employees making applications to the Council (e.g. for planning permission or purchase of land) on their own behalf must notify their Director, Divisional Director or Head of Service. However, employees may not make any applications on behalf of a member of the public.

10.2 Employees may not gain financial benefit by way of fees or gratuities or receive any other consideration for advice given to others who submit applications to the Council.

11. Outside Commitments

11.1 Employees must be clear about their contractual obligations and must not take outside employment which conflicts with the Council's interests or which may weaken public confidence in the conduct of the Council's business.

11.2 Employees must therefore make a request for additional employment, whether this is paid or unpaid, to their Manager, using the Additional Employment Declaration, available from MyView, under My Forms. They will also be prompted to read and complete a Working Time Regulations declaration as part of this.

11.3 No outside work of any sort must be undertaken in the office and use of facilities, e.g. telephones or access to typing facilities for outside work is forbidden.

12. Equality Issues

12.1 All members of the local community, customers and other employees have the right to be treated with fairness and equity.

12.2 Employees must ensure that the Council's policies (e.g. Equal Opportunities in Employment Policy) concerning equality issues are complied with in addition to any requirements of the law.

13. Fairness in Tendering

13.1 The tendering process must be undertaken in an open, fair and transparent manner. Employees involved in the tendering process and dealing with contractors must be clear on the separation of client and contractor roles within the Council.

13.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, potential suppliers, other contractors and sub-contractors.

13.3 Employees who are privy to confidential information on tenders or costs relating to either internal or external contractors must not disclose that information to any unauthorised party or organisation. Before disclosing any such information advice must be sought from the Procurement Service.

13.4 At all times employees dealing with tenders and contracts must ensure that they comply with the Council's Financial Regulations and Contract Procedures.

14. Corruption

14.1 Employees must be aware that it is a serious criminal offence for them to corruptly receive or give any payment, gift (other than a gift of nominal value), loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity.

14.2 Any case of suspected corruption will be fully investigated and any proven cases will be treated as gross misconduct and a criminal prosecution undertaken. Where an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

14.3 The Council's Whistle-blowing policy may be used by members if they become aware of an illegal or dangerous activity by officers. See also Appendix 1 which relates to Fraud Reporting and Prevention.

15. Use of Financial Resources

15.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner.

15.2 They must strive to ensure value for money to the local community and to avoid legal challenge to the Council.

16. Gifts and Hospitality

16.1 Gifts and hospitality can take many forms, and may include the following:- money, gift vouchers, lottery tickets, discounts for goods/services, tickets to entertainment or sporting events, branded gifts from providers, such as clothing or stationary items, food or drink, including invitations to lunches, dinners or breakfasts.

16.2 Employees in the course of their employment shall never seek or accept:

(a) any gift (or loan) of money; or any gift of gift vouchers, lottery tickets, scratch cards, raffle tickets, or anything else offering the chance of winning a prize; or

(b) any discounted or favourable terms of purchase (or hire or loan) of goods or services beyond terms available to the general public or to all Council Employees.

These restrictions shall apply to the seeking of any gift or benefit to any relative or friend of the employee and to any acceptance by the employee of any gift or benefit on behalf of any relative or friend.

16.3 Any **offer** of any gift or benefit that would contravene paragraph 16.2 shall be declared to the employee's line manager and recorded on MyView, using the Declaration of Gifts and Hospitality form.

16.4 A description of the gift or hospitality will need to be provided, including an estimated cost. This estimate must be based on the brand, size, usual retail cost of the item.

16.5 Where an employee is in any doubt about accepting a gift or hospitality they must discuss this with their manager or a member of Human Resources **prior to acceptance.**

Gifts or hospitality under the value of £50

16.6 Employees in the course of their employment shall never seek and shall not accept any other gift or benefit unless:

(a) it is a gift of less than £50 in value; and

(b) to refuse would cause offence; and

(c) the giver is clearly only wishing to express thanks for help given in the past and is not seeking to obtain benefit in the future; and

(d) the receipt of the gift or hospitality is declared to the employee's line manager using the Declaration of Gifts and Hospitality form on MyView.

16.7 Paragraphs 16.1 to 16.6 shall not prevent employees accepting (but not seeking) modest amounts of promotional materials at conferences, trade fairs and similar events and such items need not be registered under this Code of Conduct.

16.8 Where modest promotional materials or items are accepted by an employee from a service provider or customer these must be shared amongst other colleagues wherever possible.

16.9 Employees may accept reasonable and appropriate hospitality in the course of their employment where to refuse would appear unusual, or impolite, or be likely to cause offence. This may include the acceptance of a lift in a private or company car or refreshments offered at off-site meetings, conferences etc in the normal course of their duties.

Gifts or hospitality of £50 and above

16.10 Employees must obtain approval from a Senior Manager **before** accepting any gift or hospitality which is to the value of £50 and above.

16.11 An employee must, **within 28 days** of **being offered** any gift or hospitality at the value of £50 or above, declare this and have it authorised by a Senior Manager using the Authorisation of Gifts and Hospitality form which can be completed on MyView. This must be approved by either the Divisional Director, Director (in the case of Divisional Directors) or Chief Executive (in the case of Directors) **before it is accepted**. Receipt of hospitality at the value of £50 or above by any relative or friend of an employee shall be notified in a similar manner if the employee is aware of the receipt of that hospitality. (Note: £250 is the total value of gifts that an employee receives in a tax year in accordance with the exemption for small gifts set out under S324 ITEPA 2003. Where a gift does not satisfy the exemption conditions, the value should be subject to tax and National Insurance contributions.)

16.12 Where a gift or hospitality is unauthorized and it has to be refused, the employee must contact the relevant supplier and arrange return of the item. Details of the return must be recorded by the employee and their manager and evidence retained of this, e.g. proof of postage, email to supplier etc.

If an item cannot be returned, i.e. is perishable or the identity of the supplier is not known, it must be offered to a Council's nominated charity and recorded by the employee and manager in the same way.

16.13 Some gifts or hospitality, where authorised, may be classed as a taxable benefit. Payroll will advise employees of this and the process to be followed.

16.14 Acceptance of a gift or hospitality in breach of any of the Council's codes and protocols, or failure to declare receipt of such a gift or hospitality, will lead to disciplinary action and in certain circumstances may lead to a criminal conviction under the Bribery Act 2010 or Local Government Act 1972.

17. Personal interests of employees holding (1) politically restricted posts and (2) posts involving the negotiation and/or letting of Council contracts

17.1 In aspiring to best practice in the area of propriety and in the interests of maintaining consistency in relation to the requirements on both members and employees, the Council requires that any employee of Torbay Council holding either:-

(1) a politically restricted post; or

(2) a post involving the negotiation and/or letting of a Council contract,

to declare that interest by completing a Declaration of Interests Form available from MyView, under My Forms.

17.2 For the purposes of paragraph 17.1, an employee has a personal interest in any business of the Council where either:

(a) it relates to or is likely to affect –

(i) any body of which the employee is a member or in a position of general control or management and to which he is appointed or nominated by the Council;

(ii) any body –

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which the employee is a member or in a position of general control or management;

(iii) any employment or business carried on by the employee;

(iv) any person or body who employs or has appointed the employee

(v) any person or body who has a place of business or land in the Council's area, and in whom the employee has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vi) any contract for goods, services or works made between the Council and the employee or a firm in which he is a partner, a company of which he is a remunerated director, or a person or body of the description specified in paragraph (v);

(vii) the interests of any person from whom the employee has received a gift or hospitality with an estimated value of at least £50;

(viii) any land in the Council's area in which the employee has a beneficial interest;

(ix) any land where the landlord is the Council and the employee is or a firm in which he is a partner, a company of which he/she is a remunerated director, or a person or body of the description specified in paragraph (v) is, the tenant;

(x) any land in the Council's area for which the employee has a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

In sub-paragraph (1)(b), a relevant person is –

i. a member of the employee's family or any person with whom he/she has a close association; or

ii. any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or

iii. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

iv. any body of a type described in sub-paragraph a)(i) or (ii).

17.3 In addition to the requirements under paragraph 17.1, such employees must also declare their membership and association with clubs, societies and other organisations not open to the public (e.g. Free Masons, Round Table etc). This can be done using the Declaration of Interests Form available from MyView, under My Forms.

17.4 Without prejudice to the specific requirements of 17.1 to 17.3, in the conduct of their responsibilities, **all employees must**

- immediately declare any relevant interest to their line manager when ever not to do so would undermine public confidence in their activities, so that their line manager may make alternative arrangements to deal with the matter; and

- Declare any personal interest in a matter being discussed at any meeting of;

  -The Council
  -The Cabinet
  -Any of the Council's Committees, Sub Committees, Joint Committees, Joint Sub Committees or Area Committees and Working Parties

  where the matter to be discussed affects their interests.

18. Contact with the Media

18.1 Any contact made by the media to employees must be referred to the Communications Team in the first instance.

18.2 Employees on the authorised list are only permitted to release **factual** information in reply to questions from journalists. All comments of a political nature are reserved to Councillors.

18.3 Employees must not use the media as a vehicle to promote personal grievances; the Council's formal processes must be used in this regard (e.g. Grievance Procedure, Acceptable Behaviour process etc).

19. Appearance

19.1 First impressions count and if a member of staff is inappropriately dressed then at best it presents an obstacle to be overcome in the minds of members of the public. At worst it can create the view that the Council is inefficient. Although many styles of dress are acceptable, employees must dress appropriately for their job and give a positive image of the service they provide.

19.2 Any special clothing, uniform, personal protective equipment or identification provided by the Council must be worn where required.

20. Working Safely

20.1 The Council is committed to promoting good health and safe working among its employees. Each employee has a legal obligation to take reasonable care for their own health and safety and for the safety of others who may be affected by his/her acts or omissions. Employees must ensure that they:-

- Follow the Council's safety procedures, instructions, guidance etc.
- Comply with hygiene requirements.
- Wear any personal protective equipment supplied by the Council.
- Report any accidents or near misses at work.
- Never risk injury or danger to themselves or others.

21. Data Protection, Data Security and Information Technology

21.1 All employees must comply with Data Protection Law when processing and handling any personal data. Employees must not access information on Council systems and databases where they have no business purpose for accessing that information and must not disclose personal information unless there is a lawful basis to do so. If in any doubt, employees must seek advice must be sought from the Council's Data Protection Officer or the Information Compliance Team.

21.2 All employees must notify the Council's Data Protection Officer or Information Compliance Team if they believe there has been a security breach which may lead to or has resulted in the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.

21.3 Employees must ensure that they follow the Council's Information Security Policies in relation to the use of computers, mobile devices and the proper use of

management and data. Employees must not use personal email accounts or personal devices to conduct any Council business.

21.4 All employees must ensure they comply with the requirements under Data Protection Law to consult the Council's Data Protection Officer about matters relating to the processing of personal data and the requirement to conduct Data Protection Impact Assessments for any new processing activities or if they are procuring any new technologies to support the processing of personal data.

22. Cyber Bullying

22.1 Employees must be aware that there are boundaries and consequences of bullying/harassment through social media and therefore cyber bullying is strictly forbidden.

22.2 There is the expectation that Council employees will maintain a high level of professionalism at all times when using social networking sites such as Facebook, Twitter, etc or any on-line sites where information can potentially be posted and made available publicly.

22.3 Employees must not assume that their entries on any website will remain private and they must never send or post abusive or defamatory messages.

22.4 Employees must be careful that comments cannot be perceived as damaging the Council's reputation or that personal comments posted about individuals/work colleagues cannot be interpreted as possible harassment, as they may be legally liable for any damage to reputation.

22.5 Derogatory comments about the Council, Members or other employees can lead to disciplinary action, even if this occurs outside of working hours.

22.6 Further information is available in the Disciplinary Policy and Acceptable Behaviour Policy both of which can be downloaded from MyView, under My Documents or by contacting Human Resources.

23. Misuse of Drugs and Alcohol

23.1 The Council forbids the possession, use or distribution of non-prescribed illegal drugs on any of its sites, vehicles or plant. If anyone on Council business is found to be involved in any of these activities this will be treated as gross misconduct. The police will also be informed.

23.2 Anyone who drives, operates machinery or is directly responsible for the care and safety of clients as part of their job is expected to refrain from drinking during working hours or from being under the influence of alcohol or drugs while carrying out their normal duties. All other employees are expected to maintain professional standards in their dealings with the general public and colleagues and to ensure their performance and conduct in the workplace is not adversely affected through

consumption of alcohol. When an employee is taking prescribed drugs which may affect their ability to perform their normal duties e.g. driving or operating machinery, the employee must inform their manager.

23.3 The misuse of alcohol, drugs and other substances can have a serious consequence in the workplace, especially when this misuse impairs the professional ability of employees. The Council will appropriately manage employees who are experiencing problems with drug, alcohol or substance misuse in a fair manner and will encourage them to seek support from trained counsellors. However, it is a disciplinary offence for any employee to be unfit for work due to the influence of alcohol, drugs or substances. The Drug and Alcohol Misuse Policy can be downloaded from MyView, under My Documents or by contacting Human Resources.

Appendix 1

Reporting Suspected Fraud and Suspected Money Laundering

All employees are expected to report any instances of suspected money laundering immediately.

This includes any activities that appear to be dishonest, illegal or unethical.

Employees must comply with all applicable money laundering regulations, policies and processes designed to prevent money laundering.

This includes understanding and adhering to the procedures for identifying and reporting suspicious activity as outlined in the money laundering process available on the intranet.

All employees are expected to report any instances of suspected fraud immediately.

Reports of suspected fraud or money laundering should be made to Corporate Fraud using the reporting fraud form available at Torbay.gov.uk. All reports are treated as confidential.

Employees must not disclose a report of fraud or money laundering to anyone, especially the suspected person.

Employees must not investigate fraud or money laundering themselves as they could find themselves guilty of an offence and will be in breach of policy.

Preventing Fraud

Torbay Council is committed to protecting the public purse from fraud and impropriety.

All employees have an obligation to prevent fraud. Once fraud has occurred, all employees have an obligation to report fraud to the corporate fraud team. They are not authorised to investigate the fraud themselves.

All managers have a responsibility to capture and maintain a fraud risk assessment for the services their teams provide. This is to aide their responsibility to ensure that the risk from fraud is mitigated.

Each employee has a responsibility to advise their manager, if they identify, through their work, potential for fraud to occur.

Managers have a responsibility to ensure if their team raise a concern of process weakness, it is captured in their fraud risk assessment.

All managers must ensure any application forms for their service have an up-to-date fraud statement and declaration section. You can find guidance on the Intranet.

Internal Audit and Corporate Fraud play a preventative role in reviewing and assessing to ensure that systems and procedures prevent and detect fraud. The Audit and/or Fraud team investigate all cases of suspected irregularity.

All employees are required to engage with this process.

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Code of Corporate Governance

Introduction

Our Code of Corporate Governance ('the Code') sets out the Council's governance standards. These standards ensure the Council is doing the right things, in the right way, in a timely, inclusive, open, effective, honest and accountable manner.

The Council's Corporate Governance Standards

The Code is based on the seven governance principles set out in the CIPFA/SOLACE guidance 'Delivering Good Governance in Local Government' (2016)[1].

These principles and their sub principles are set out below, along with a series of commitments which describe the Council's approach to delivering against the principles.

Meeting the commitments set out in the Code

Each year, the Council publishes an Annual Governance Statement (AGS) to accompany the Annual Accounts.

The AGS provides an overview of how the Council's governance arrangements operate, including how they are reviewed annually to ensure they remain effective and sets out key examples of how the Council has met the governance commitments set out in the Code.

Torbay Council's Code of Corporate Governance

A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law

Behaving with Integrity

We aim to:

- Put into practice our organisational values and ensure they are effective.
- Exercise leadership by ensuring Members and Officers behave in ways that exemplify high standards of conduct and effective governance.
- Make sure our Members and Officers are encouraged, supported, and protected to speak up if they encounter behaviours which do not match our values.

Demonstrating Strong Commitment to Ethical Values

We aim to:

- Support the Standards Committee to champion high standards of ethical governance from elected members.

[1] CIPFA is the Chartered Institute of Public Finance and Accountancy, and SOLACE is the Society of Local Authority Chief Executives.

Maintain robust policies and procedures so that ethical values are put into practice, including separate Codes of Conduct for Members and Officers and a Member/Officer Relations Protocol. Operate ethical procurement policies to ensure that commitment to our values and integrity is delivered by external suppliers delivering services on our behalf.

Respecting the Rule of Law

We aim to:

- Use legal powers to the full benefit of the citizens and communities in the area.
- Appoint Statutory Officers who have the skills, resources and support necessary to perform effectively in their roles and support them to fulfil their responsibilities within legislative and regulatory requirements.
- Ensure that all Members and Officers appointed to undertake roles as Directors on either Company or Charity Boards have access to appropriate guidance and support to ensure that they undertake their duties within the context of the relevant Acts that govern such bodies.

B. Ensuring openness and comprehensive stakeholder engagement

Ensuring Openness

We aim to:

- Develop and clearly communicate the Council's purpose and vision and its intended outcome for citizens and service users.
- Be rigorous and transparent about how decisions are taken and listen and act on the outcome of constructive scrutiny.
- Take an active and planned approach to dialogue with, and be accountable to, the public to ensure effective and appropriate service delivery whether directly by the Council, in partnership or by commissioning.

Engaging Comprehensively with Institutional Stakeholders

We aim to:

- Ensure relationships between the Council and its partners are clear so that each knows what to expect of the other.
- Develop formal and informal partnerships to allow for resources to be used more efficiently and outcomes achieved more effectively.
- Ensure effective monitoring of the performance and outcomes delivered by our arms-length companies.

Engaging with Individual Citizens and Service Users Effectively

We aim to:

- Deliver against our Community Engagement and Empowerment Strategy, including maintaining effective and accessible channels for dialogue and a commitment to sharing outcomes of consultations and other community engagement mechanisms with the public and other stakeholders.

- Proactively engage with Torbay's different communities and identify groups to inform the development and delivery of our services.

- Maintain an effective complaints and compliments framework, so that we can identify where improvements in service delivery are needed and learn effectively from the complaints that we have received.

C. Defining outcomes in terms of sustainable economic, social, and environmental benefits

Defining Outcomes

We aim to:

- Maintain a Community and Corporate Plan and Council Business Plan which sets out the priorities which the Council will focus on to deliver its ambition for Torbay.

- Put our Community and Corporate Plan at the heart of our budgeting, business planning and service planning.

- Maintain a Medium Term Financial Plan which sets out financial assumptions and provides a set of goals for financial decision making.

Sustainable Economic, Social and Environmental Benefits

We aim to:

- Assess and address the economic, social, equality and environmental implications of our decisions.

- Ensure that Officers are clear about their role in meeting the Public Sector Equality Duty, including incorporating our Corporate Equality Objectives into service planning.

- Maintain a Council-wide focus on tackling the social determinants of health inequalities.

D. Determining the interventions necessary to optimise the achievement of the intended outcomes

Determining Interventions

We aim to:

- Ensure effective leadership throughout the Council and be clear about executive and non-executive functions, levels of delegation, and the roles and responsibilities of the scrutiny function.
- Ensure that decision makers receive accurate, relevant and timely performance information and intelligence to support them with objective and rigorous analysis of options, covering intended outcomes, financial impact and associated risks informing efficient service delivery.
- Commit to seeking continuous feedback from residents and those who use our services, both in planning service changes and improvements.

Planning Interventions

We aim to:

- Plan our activity at a strategic level through our budget and business planning cycle, in consultation with internal and external stakeholders, to ensure services are delivered efficiently and effectively across the organisation.
- Ensure consistent and effective service planning across the organisation.
- Establish appropriate performance indicators to measure the performance of services and projects, in order to continually improve effective service delivery arrangements.

Optimising Achievement of Intended Outcomes

We aim to:

- Ensure that the Council makes best use of resources and that taxpayers and service users receive excellent value for money.
- Embed social value into procurement and commissioning and integrate monitoring of these objectives with contract and performance management procedures.

E. Developing the organisation's capacity, including the capability of its leadership and the individuals within it

Developing the Organisation's Capacity

We aim to:

- Make best use of human resources by taking an active and planned approach to meet our responsibility to staff and members, including making sure they

have the skills, knowledge, experience and resources they need to perform well in their roles.

- Embed benchmarking within our business and service planning to help allocate resources to meet defined outcomes effectively and efficiently.

Developing the Capability of the Organisation's Leadership and Other Individuals

We aim to:

- Ensure that a constructive working relationship exists between Council Members and Officers and that the responsibilities of Members and Officers are understood and carried out to a high standard.

- Develop the capability of all Members and those Officers with governance responsibilities and evaluate their performance, as individuals and as a group.

- Encourage new talent for membership of the Council so that best use can be made of individual's skills and resources in balancing continuity and renewal.

F. Managing risks and performance through robust internal control and strong public financial management

Managing Risk

We aim to:

- Ensure that an effective risk management framework is in place.

Managing Performance

We aim to:

- Ensure that an effective performance management framework is in place.

- Have good-quality information, advice and support to ensure that services are delivered effectively and are what the community wants/needs.

- Exercise leadership through a robust scrutiny function, which effectively engages local people and all local institutional stakeholders, including partnerships, and develops constructive accountable relationships.

Robust Internal Control

We aim to:

- Maintain an Audit Committee which oversees the effectiveness of governance and risk management arrangements, internal systems of control, and anti-fraud and anti-corruption arrangements.

- Report to Audit Committee our internal auditor's findings into the overall adequacy and effectiveness of the framework of governance, risk management

and control; and the outcomes of the work of the external auditor.

Managing Data

We aim to:

- Ensure effective arrangements are in place for the safe collection, storage, use and sharing of data, including processes to safeguard personal data.
- Ensure effective arrangements are in place and operating effectively when sharing data with other bodies.
- Review and audit regularly the quality and accuracy of data used in decision making and performance management.

Strong Public Financial Management

We aim to:

- Maintain an approach to financial management that supports both long-term achievement of objectives, and shorter term financial and operational performance, whilst ensuring value for money.
- Ensure that appropriate and timely advice is given on all financial matters, required financial records and accounts are kept, and oversee an effective system of internal financial control.
- Follow CIPFA's Prudential Code and Treasury Management Code of Practice which set out the risk framework through which the Council manages its balance sheet and makes capital investment decisions, and statutory guidance on best value standards and interventions.

G. Implementing good practices in transparency, reporting, and audit to deliver effective accountability

Implementing Good Practice in Transparency

We aim to:

- Commit to publishing information, including reports, in a timely manner which is accessible to residents and other stakeholders.
- Ensure that our website is set out in a clear and easily accessible way, using plain language and also that it is compliant with web content accessibility standards.
- Follow the Local Government Transparency Code, which includes requirements and recommendations for local authorities to publish certain types of data.

Implementing Good Practices in Reporting

We aim to:

- Report at least annually on performance, value for money and stewardship of resources in a timely and understandable way.
- Publish an Annual Governance Statement which provides evidence of good governance and includes an action plan for improvement.
- Publish performance information in a consistent and timely way which allows for comparison with other, similar organisations.

Assurance and Effective Accountability

We aim to:

- Positively engage with external challenge, including from peer authorities, as well as internal and external review and audit, and inspections from regulatory bodies, giving thorough consideration to any arising recommendations.
- Ensure that implementation of, or response to improvement recommendations made by Internal and External Auditors and other external assessors occurs within due dates.
- Follow the prevailing internal audit standards which apply to local government, including a commitment to develop audit plans which are designed to invite comment from management and the Audit Committee.

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Local Protocol – Member and Officer Relations

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1. Introduction

1.1 Torbay Council will best serve the interests of local people if members and officers have an excellent working relationship characterised by mutual respect, courtesy and trust. Such a relationship will mean that members and officers speak to one another openly and honestly.

1.2 This Protocol is intended to facilitate such a working relationship and to help members and officers to perform effectively. This Protocol gives guidance on members' and officers' respective roles, on what they may expect from each other, and on what to do on the occasions when things go wrong.

1.3 This Protocol must be read in the context of the Council's Constitution (especially the Member Code of Conduct and the Employee Code of Conduct). The Council has authorised the Standards Committee to consider alleged breaches of this protocol by members. The Council has also authorised the Chief Executive to take appropriate action where an officer is alleged to have breached this Protocol.

2. Interpretation

2.1 In this Protocol:

"the Cabinet" includes any person or body exercising executive functions;

"member" includes all elected members of the Council and all non-elected members of any committee (including the Standards Committee and any the Overview and Scrutiny Board) (or any sub-committee) irrespective of whether or not they have any voting rights;

"Officer" includes all members of staff directly employed by Torbay Council, agency workers or persons seconded to the Council, the Council's arms length companies and all contractors and employees of contractors delivering services on behalf of the Council.

3. Guiding Principles

3.1 In their dealings with one another members and officers will:

(a) Serve only the public interest;

(b) Behave properly and not place themselves in situations where their honesty and integrity may be questioned;

(c) Make decisions on merit

(d) Be open about (and be prepared to give reasons for) their actions;

(e) Promote equality by not discriminating unlawfully against any person;

(f) Treat people with dignity and respect, accepting that everyone is acting in good faith, and show courtesy in all meetings and contacts, both formal and informal, between members and officers.

(g) Uphold the law;

(h) Seek to ensure that the Council uses its resources prudently;

(i) Promote and support all these general principles by example, and act in a way that secures or preserves public confidence in local government;

(j) In addition, members will respect the impartiality and integrity of officers; and

(k) Officers will work for the Council as a whole, treating members of different party groups fairly, and showing no favour to any particular political group or individual member.

4. General Responsibilities of Members and Officers

4.1 Members and officers are all servants of the public and they are indispensable to one another. But their responsibilities are distinct.

4.2 Members determine the strategic political direction of the Council and determine those matters that are not delegated to officers. They also are responsible for representing (and are answerable to) the electorate (including those constituents who did not vote for them). Members serve only so long as their term of office lasts.

4.3 Officers are employed by the Council as a whole. Their role is to give advice to members (including those members who are not part of the majority group), to implement members' decisions and to carry out the Council's work. Officers are responsible to the Chief Executive.

5. The Role of Members – All Members

5.1 Members have three main corporate roles:

(a) Determining the budget and policy framework of the Council and giving political leadership;

(b) Monitoring and reviewing the performance of the Council in implementing policy and delivering services; and

(c) Representing the Council externally.

5.2 Members also determine those matters that are not delegated to officers and have the following ward-based roles:

(a) Representing their constituents' views; and

(b) Dealing with individual casework.

5.3 It is not the role of members to involve themselves in the day-to-day management or operation of the Council's services. However, this does not prevent members from raising such matters where they affect local people.

6. The Role of Members – Specific Functions

6.1 Members have different responsibilities depending upon the specific roles they are undertaking.

(a) The Leader of the Council will provide strategic policy guidance as to his/her political priorities and assist in the formulation of the Council's corporate objectives in line with those priorities.

(b) Members of the Cabinet will support the Leader of the Council in the formulation of the Council's corporate objectives.

(c) Members who sit on the Overview and Scrutiny Board, its sub-committees or any working parties of the Board will be involved in reviewing the Council's decisions and services. They will also contribute towards the development of new Council policies and may be asked to take a key role in the Best Value process. Individual members of the Overview and Scrutiny Board, its sub-Committees or any working parties of the Board (including Chairmen/women) have no decision-making powers.

(d) Members of the Council's Regulatory and other Committees will be responsible for taking decisions in relation to the functions of those committees in accordance with the Scheme of Delegation of Council Functions. Individual members of these Committees (including Chairmen/women) have no decision-making powers.

(e) Members of the Shadow Cabinet collectively have responsibility for providing an effective challenge to the Administration and constructive political opposition of the achievement of the Council's corporate and service objectives and priorities.

6.2 The Leader of the Council, the Civic Mayor, members of the Cabinet, Members of the Shadow Cabinet, the Overview and Scrutiny Co-ordinator, members of the Overview and Scrutiny bodies and Chairmen/women of Committees, all have additional responsibilities. Because of those responsibilities, they are entitled to have greater expectations of senior officers. Because of this, their relationships with senior officers may be different from and more complex than those of Members without such responsibilities. However, such Members must still respect the impartiality of all officers. In particular, such Members must not ask officers to undertake work of a party political nature, or to do anything that would put them in difficulty in the event of a change in the political composition of the Council.

7. The Role of Officers

7.1 Officers are employed by, and serve, the whole Council.

7.2 The role of officers is to give advice and information to members and to implement the policies determined by the Council.

7.3 In giving advice to members (and in preparing and presenting reports) it is the responsibility of the officer to express his/her own professional views and recommendations. Whilst an officer may report the view of individual members on an issue, if the member wishes to express a contrary view he/she must not seek

to pressure the officer to make a recommendation contrary to the officer's professional view. Editorial control of reports lies, ultimately, with the Chief Executive, or, in the case of reports by other statutory officers, with the relevant officer.

7.4 The statutory officers have responsibilities in law over and above their obligations to the Council and to individual members. Members must respect these obligations and co-operate with those officers in the discharge of these responsibilities.

7.5 The Chief Executive is responsible for ensuring that officers fully and effectively support members in exercising both executive and non-executive functions.

7.6 Officers are responsible for implementing the proper decisions of members. However, in terms of line management and disciplinary matters they are responsible to the Chief Executive and not to individual members of the Council, whatever office they might hold.

7.7 Officers are required to be politically neutral and act impartially in the best interests of the Council at all times.

7.8 Officers are responsible for managing the day-to-day business of the Council in accordance with the Council's Budget and Policy Framework. Officers are also responsible for taking managerial and operational decisions in accordance with the Council's Scheme of Delegation. However, this does not prevent members from raising day-to-day matters where they affect their ward via the Council's on-line member casework system.

7.9 Officers are responsible for implementing decisions taken by members (and for taking and implementing decisions where the power to do so is delegated to them).

7.10 **Group Assistants**

Whilst all other officers will treat members of different party groups equally and show no favour to any particular party, different rules apply to any group assistants who are appointed. Unlike other officers, group assistants may be appointed on the basis of party political allegiance. However, they may not have any Council powers delegated to them.

8. What Members May Expect From Officers

8.1 All members are entitled to expect from officers:

(a) A commitment to the Council as a whole, and not to any political group.

(b) A working partnership.

(c) An understanding of and support for respective roles, workloads and pressures.

(d) Timely responses to enquiries and complaints.

(e) That advice given to members will be:

(i) Carefully researched;

(ii) Based on the relevant professional knowledge, while at the same time considering the Council's wider interests;

(iii) Discussed and agreed with relevant colleagues;

(iv) Agreed by the relevant senior officer;

(v) Politically impartial and not influenced by an officer's own political views of preferences.

(f) Reports that contain all the relevant issues, that do not contain irrelevant matters and that set out all the options it is reasonable for the decision-maker to consider.

(f) Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.

(g) That ward members will be kept informed of matters affecting their ward. Where practicable, ward members will be given reasonable advance warning of Council activities relating to their ward.

(h) Awareness of and sensitivity to the political environment.

(i) Appropriate knowledge and skills and a commitment to undertake training and development in order to carry out their role effectively.

(k) Integrity, mutual support and appropriate confidentiality.

(l) Not to have personal issues raised with them by officers or to use their relationship with members to advance their personal interests or to influence decisions improperly.

(m) That where officers wish to bring forward new policy initiatives these will first be discussed with the Leader of the Council, the Cabinet, or Cabinet member, as appropriate.

(n) That officers will at all times comply with the Employee Code of Conduct.

(o) That when dealing with the media, officers will act in a fair, balanced, reasonable and non-political manner.

8.2 **Opposition members**

As individual members, all members have the same rights and obligations in their relationship with officers and will be treated equally. This principle is particularly important in the context of the Council's Overview and Scrutiny Board, its sub-committees or any working parties of the Board. However, where a political group forms a majority group (either alone, or in partnership with another group), it is quite proper that the relationship between senior officers and the majority group will differ from that with opposition groups, given that the majority group will be able to determine the Council's policies and budget.

9. What Officers May Expect From Members

9.1 All officers are entitled to expect from members:

(a) A working partnership.

(b) An understanding of and support for respective roles, workloads and pressures.

(c) Political leadership and direction.

(d) Integrity, mutual support and appropriate confidentiality.

(e) Courtesy and civility, and not to be subject to bullying or harassment or to be put under undue pressure.

(f) Not to be personally criticised in meetings of the Council, the Cabinet, or any Committee, or any other meeting at which members of the public or third parties are present, or in the media. If members are unhappy with an officer's performance they shall raise the issue in private with an appropriate Director, Divisional Director, or the Chief Executive in the case of posts at Director or Divisional Director level and above in accordance with paragraph 16.

(g) Proper consideration of the seniority of officers in determining what are reasonable requests, having regard to the power relationship between members and officers, and the potential vulnerability of officers, particularly at junior levels. All requests for officer attendance at meetings should be made through the relevant Director, Divisional Director or Service Manager.

(h) That members will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly.

(i) That when seeking advice members will do so at the earliest reasonable opportunity and will disclose if another officer has also been approached about the matter.

(j) When members require officers to attend meetings they should give those officers as much notice as possible to allow sufficient preparation time and for the meeting(s) to be diarised.

(k) That members will at all times comply with the Member Code of Conduct.

10. Officer Advice to Political Groups

10.1 Political groups have an important part to play in the development of policy and the political management of the Council. It is in the interest of the Council to support effective operation of political groups, but their operation can pose particular dangers in terms of the impartiality of officers. It is common practice for political groups to give preliminary consideration to many matters of Council business in advance of such matters being considered by the relevant Council decision making body. Party groups may properly call upon officers to support and contribute to such deliberations.

10.2 Such support shall only be sought from senior officers and all requests for such support must be made via the appropriate Director. This can take many forms ranging from a briefing meeting with the Leader of the Council or Cabinet Member prior to a formal meeting, to a presentation to a full party group meeting. Whilst in practice, such officer support is likely to be most in demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

10.3 Officers' support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business and not be expected to be present at meetings (or parts of meetings) when matters of party business are to be discussed.

10.4 Party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or are acted upon as such. Similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant decision-making body when the matter in question is considered.

10.5 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting that includes persons who are not members of the Council, including external advisors to political groups. Such persons are not bound by this Protocol or by the Member Code of Conduct (including the provisions concerning the declarations of interest and respect of confidentiality). Consequently, officers may not be able to provide the same level of information and advice as they would to a members' only meeting. The Local Protocol for External Advisors to Political Groups sets out provisions for sharing information to appointed external advisors.

10.6 Officers must respect the confidentiality of any party group discussions at which they are present and not relay the content of any such discussion to any other party group.

11. Support Services to Members

11.1 The Council is only allowed to provide support services to members that directly assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. The support services shall never be used in connection with party, political or campaigning activity or for private purposes.

11.2 The support services that the Council can provide (for example typing, photocopying, transport, etc) may be discussed and agreed with the Head of Governance Support if officer resources allow.

12. Correspondence

12.1 Correspondence between an individual member and an officer will not normally be copied (by the officer) to another member without prior consultation with the sender.

12.2 Official letters on behalf of the Council will normally be sent out under the name of the appropriate officer.

12.3 Members will use all reasonable endeavours to respond to written requests for information by members of the public within 20 working days using the Council's Members Casework system and in accordance with the member casework guidance issued by the Information Compliance Team. Responses will be provided via the casework system normally within 5 working days..

13. Members' Access to Information and to Council Documents

13.1 This is covered in the Council's Standing Orders in respect of Access to Information.

14. Press and Media Relations

14.1 The Council will work within the Code of Recommended Practice on Local Authority Publicity. Members will not ask officers to publish any material that appears to be designed to affect public support for a political party.

14.2 The following four main criteria may help when checking compliance with the Code:

(i) Is the publicity likely to influence support for a political party?

(ii) Is the timing sensitive?

(iii) Does it reflect Council policy?

(iv) Is it "information" or "persuasion"?

14.3 Officers when approached by the media will refer all queries to the Council's Communications Team. Members may respond directly to the media when the media are seeking political comment and will refer all other queries to the Communications Team.

14.4 Following the calling of a local, national or European election (excluding any by-elections) or Police and Crime Commissioner election or local/national referendum, members are unable to carry out any activity on behalf of the Council which could call into question political impartiality or which could give rise to criticism that public resources are being used for party political purposes (known as the Pre-election Restriction on Publicity period).

15. Limitations Upon Behaviour

15.1 The distinct roles of members and officers necessarily impose limitations upon behaviour. By way of illustration, and not as an exclusive list:

(a) Close personal relationships between members and officers can confuse these separate roles and get in the way of the proper discharge of the Council's functions, not least in creating the perception in others that a particular member or officer may secure advantageous treatment.

(b) The need to maintain the separate roles means that there are limits to the matters on which they may seek the advice of officers, both in relation to personal matters and party political issues.

(c) Relationships with particular individuals or party groups shall not be such as to create public suspicion that an employee favours that political group above others.

(d) Members do not have any responsibility for day to day management of services or employees; the latter is a statutory responsibility of the Head of Paid Service.

16. When Things Go Wrong

16.1 From time to time the relationship between members and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation, if necessary by the Chief Executive and the Leader of the Council or appropriate group leader, this is not always possible. Where this is the case, and a member considers that an officer has acted in breach of this Protocol, the following procedure will be followed.

16.2 **Procedure for members complaining about an officer**

(a) In the event that a member is dissatisfied with the conduct, behaviour or performance of an officer, the matter shall be raised in private with the appropriate Director or Divisional Director. Where the officer concerned is an Divisional Director or Director the matter shall be raised with the Chief Executive. Where the complaint is in respect of the Chief Executive it should be reported to the Monitoring Order who will then follow the national procedure set out in the Chief Executive's Handbook. Where the complaint is in respect of both the Chief Executive and the Monitoring Officer, Standing Orders - Officer Employment shall be followed.

(b) If the matter cannot be resolved informally, the member may make a written complaint to the Chief Executive. This must specify all incidents that the complainant intends to raise and set out any alleged breach of this protocol. The Chief Executive will decide whether to conduct any investigation or delegate it to a Director.

(c) The Chief Executive or his/her representative may disregard any complaint that he/she considered to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Chief Executive will give a copy of the complaint to the officer concerned and invite his/her written comments (if any) normally within 10 working days.

(d) The Chief Executive or his/her representative will give a copy of the officer's response to the complainant and invite his/her further written comments (if any) normally within 10 working days.

(e) If any material new issues are raised the Chief Executive or his/her representative may give the respective parties such further opportunities to make written comments as he/she shall consider reasonable.

(f) If the Chief Executive or his/her representative will then consider the written submissions and shall either uphold or reject the complaint (in whole or in part) and/or require such actions as he/she considers appropriate.

(g) If the Chief Executive or his/her representative considers it appropriate, he/she may invoke the Council's Disciplinary Procedure at any time during this process.

(h) A complainant may at any time withdraw a complaint by notice in writing to the Chief Executive.

16.3 **Procedure for officers complaining about a member**

If attempts at resolving matters informally have not been successful, where an officer considers that a member has acted in breach of this Protocol, the following procedure will be followed:

(a) The officer must make a written complaint to the Monitoring Officer. This must specify all incidents that the complainant intends to raise and set out the alleged breach of this Protocol.

(b) The Monitoring Officer may disregard any complaint that he/she considers to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Monitoring Officer will give a copy of the complaint to the member concerned and invite his/her written comments (if any) normally within 10 working days.

(c) The Monitoring Officer will give a copy of the member's response to the complainant and invite his/her further written comments (if any) normally within 10 working days.

(d) If any material new issues are raised the Monitoring Officer may give the respective parties such further opportunities to make written comments as he/she shall consider reasonable.

(e) The Monitoring Officer will then consider the written submissions and shall, unless he/she is satisfied that the complaint is clearly unjustified, refer the matter to the Standards Committee for consideration. The Standards Committee may uphold or reject the complaint (in whole or in part) and/or recommend to Council such action as it considers appropriate.

(f) A complainant may at any time withdraw a complaint by notice in writing to the Monitoring Officer.

16.4 Exceptions may be made to the procedures outlined in paragraphs 16.2 and 16.3 above if to do otherwise would conflict with the Council's policy on "Whistleblowing" or potentially prejudice a criminal investigation (whether in progress or reasonably contemplated in the future) or the complaint relates to a breach of the Code of Conduct for Members where it shall be lodged as a formal complaint and the Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members' Code of Conduct shall be followed.

16.5 Under either paragraphs 16.2 or 16.3 an officer may be assisted or represented by a colleague or Trades Union representative and a member may be assisted by a person acting as a “friend” in support of the member.

17 Involvement of Ward Members

17.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Member(s) representing the ward affected should as a matter of course be invited to attend the meeting. Similarly whenever the Council undertakes any form of consultative exercise on a local issue, the ward Member(s) should be notified at the outset of the exercise.

Local Protocol – Relations between the Leader of the Council and Political Groups

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Torbay Council – ConstitutionLP – Leader of the Council and Political Groups Relations

1. Introduction

1.1 Torbay Council will best serve the interests of local people if there are clear arrangements between the Leader of the Council and other Councillors and between the Political Groups represented on the Council for the management of political business. The interests of local people will also be best served if the working relationship between the Leader of the Council and other Councillors and between Members of different Political Groups is characterised by mutual respect, informality and trust, whilst recognising the need for healthy and constructive political debate within the democratic process, irrespective of the political make-up of the Council. In recognition of this, and to ensure the effective governance of the Council, political groups will work together in a co-operative, open, transparent and a participatory manner and within the defined roles of Administration and Opposition.

1.2 This Protocol is intended to facilitate such a working relationship and to help Councillors perform effectively. This Protocol gives guidance on Councillors' roles, and on what to do on the occasions when things go wrong.

1.3 This Protocol must be read in the context of the Council's Constitution, the Members' Code of Conduct and the Local Protocol on Member and Officer Relations.

2. Interpretation

2.1 In this Protocol:

"Council function" means a function that is not the responsibility of the Cabinet;

"Executive function" means a function that is the responsibility of the Cabinet;

"the Administration" includes the group of Members which provides the leadership of the Council;

"the Opposition" includes the group of Members who are not part of the Administration and provide constructive challenge to the Administration and holds decision-makers to account;

"the Cabinet" includes any person or body exercising Executive functions including the Leader of the Council;

"the Shadow Cabinet" includes Opposition Members;

"Member" includes the Leader of the Council, all elected Members of the Council and all non-elected Members of any Committee (including the Standards Committee and the Overview and Scrutiny Board) (or any Sub-Committee) irrespective of whether or not they have any voting rights;

"Officer" includes all members of staff directly employed by Torbay Council, agency workers or persons seconded to the Council, the Council's arms length companies and all contractors and employees of contractors delivering services on behalf of the Council;

"Senior Officer" means the Chief Executive, Directors, Divisional Directors and Heads of Service; and

"Statutory Officers" means the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer.

3. Guiding Principles

3.1 In their dealings with one another Members will:

(a) Serve only the public interest;

(b) Behave properly and not place themselves in situations where their honesty and integrity may be questioned;

(c) Make decisions on merit;

(d) Be open about (and be prepared to give reasons for) their actions;

(e) Promote equality by not discriminating unlawfully against any person;

(f) Treat each other with dignity and respect, accepting that everyone is acting in good faith, and show courtesy in all meetings and contacts, both formal and informal;

(g) Uphold the law;

(h) Seek to ensure that the Council uses its resources prudently;

(i) Promote and support all these general principles by example, and act in a way that secures or preserves public confidence in local government; and

(j) Respect the impartiality and integrity of officers.

3.2 In their dealings with one another Members will also uphold the Members' Code of Conduct. The following provisions of the Code are particularly relevant to relations between Members:

Paragraph 4(a) of the Code -

***"**you must treat others with respect"*

Paragraph 5(h) of the Code -

"you must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute."

3.3 The Leader of the Council and the Group Leaders will use their best endeavours to communicate with each other so as to ensure that Council business is conducted effectively and in the best interest of the whole Council and local people.

4. The Roles of Members and Officers and Member and Officer Relations

4.1 The roles of Members and officers and relations between Members and officers are governed by the Local Protocol on Member and Officer Relations.

5. Political Differences and Personal Criticism

5.1 This Protocol is not intended to restrict or discourage legitimate political debate. However, it is also in the interests of local people that there is a working relationship between the Leader of the Council, other Members and between Political Groups, and through their respective roles of Administration and Opposition. That working relationship will be assisted if it is supported by a clear set of guidelines, and it is these that this Protocol is intended to provide. The relationship between the Leader of the Council and other Members and between the Political Groups will also be supported if all Members adhere to high standards of courtesy and mutual respect in their dealings with one another.

5.2 As with their relations with officers, in their dealings with fellow elected Members, it is important that robust debate of the issues at stake does not deteriorate into personal criticism of another person who holds a different point of view. Courtesy, respect and civility must be maintained at all times.

5.3 Fellow elected Members must not be subject to name-calling, personal criticism or abuse. A fellow elected Member's integrity must not be questioned unless there is clear documentary evidence to substantiate any allegation made. This principle must be adhered to in meetings of the Council, the Cabinet, and any Committee meeting, or any other meeting at which members of the public or third parties are present. This principle must also be observed in all dealings with the press and other media, including use of social media.

6. Extension of Principle of Cross-Party Representation

6.1 By law all political groups are entitled to a proportionate number of seats on Council Committees and Sub-Committees (but not on the Cabinet and working parties). In order to facilitate good inter-party relations, Torbay Council has extended the principle of cross-party representation to Working Parties.

6.2 Each political group will be entitled to nominate a proportionate number of representatives to every working party established by the Council or a Council committee and the second largest political group will also normally be invited to nominate two representatives to Working Parties where a strict application of proportionality would only indicate a single representative.

6.3 Each political group will be entitled to nominate Members to a proportionate number of seats on outside organisations. However, where the outside organisation requests a specific role (e.g. a relevant Cabinet Member) the Council should accede to the request other than in exceptional circumstances. Appointments to outside organisations are made every four years following a local government election and will not normally be reviewed after a change of political balance during the four year period. The Chief Executive has delegated authority to determine any new appointments within the four year period.

6.4 The Cabinet will be responsible for appointing any Member Champions, unless such an appointment is a Council function or is reserved by law to the Council. The role of Member Champions is to promote their specified theme to other Members, Council officers and the Council's partners to ensure a co-ordinated approach. A protocol on the role of Member Champions is included in the Constitution.

6.5 Where the budget is allocated, Group Assistant posts will be offered to all qualifying political groups on the basis of a full-time (37 hours per week) post and not on the basis of reduced hours proportionate to the size of the group.

6.6 Provision of training and development for Members will be provided to all Members, irrespective of the political group to which they belong. A Members' development programme will be prepared each year, in consultation with a working group comprising a representative from each political group, for authorisation by the Chief Executive. The Members' training budget will be used primarily to meet the cost of the development programme with the remainder of the funding to be allocated in equal proportions (one third) to fund the following:-

(a) Training for Cabinet Members
(b) Training for Scrutiny Members
(c) Training not specifically related to Cabinet or scrutiny functions.

Additional training and development that is not included within the Members' Development Programme shall only be authorised by the Head of Governance.

Attendance by Members at conferences/seminars shall be authorised by the Director, Divisional Director or Head of Service who holds the relevant budget that will cover the costs for the Member attending the conference/seminar.

The three Councillors appointed by the Council to be on the Local Government Association General Assembly, or their representatives, will be invited to attend the Local Government Association Annual Conference.

Following attendance at a conference, Members will provide feedback to all Members of the Council.

6.7 Section 6 of this Protocol may be reviewed in the event that there is a change in the political control of the Council.

7. Meetings Between the Leader of the Council, Cabinet Members, Shadow Cabinet Members and Group Leaders

7.1 In order to promote cross-party working, address issues of common concern and to agree appropriate actions, the Chief Executive will from time to time arrange meetings of the Leader of the Council, Deputy Leader, Group Leaders, Deputy Leaders and the Overview and Scrutiny Co-ordinator, plus Cabinet Members and Shadow Cabinet Members to discuss issues including:-

(a) Council meeting business and strategic issues;

(b) Member capacity and performance;

(b) Constitutional issues;

(c) Scrutiny programme; and

(d) Priorities.

8. Relations with Members of Other Local Authorities and Members of Parliament

8.1 Members of all political groups will observe the spirit of this Protocol in their dealings with Members of other local authorities and Members of Parliament.

8.2 The Leader of the Council and Members of all political groups will seek to work constructively with Members of other local authorities, including as Members on Joint Committees, irrespective of their potentially different political allegiances in order to promote the best interests of the Council and local people.

8.3 The Leader of the Council and Members of all political groups will seek to work constructively with Members of Parliament, especially Members of Parliament representing parts of the Borough, irrespective of their potentially different political allegiances in order to promote the best interests of the Council and local people.

9. When Things Go Wrong

9.1 From time to time the relationship between Members may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation, if necessary by the Leader of the Council and Group Leaders, this is not always possible. Where this is the case, and a Member considers that another Member has acted in breach of this Protocol, the following procedure will be followed.

9.2 If attempts at resolving matters informally have not been successful, where a Member considers that another Member has acted in breach of this Protocol, the following procedure will be followed:

(a) The Member must make a written complaint to the other Member and copy that complaint to the Leader of the Council (if appropriate) and the relevant Group Leader(s). This must specify all incidents that the complainant intends to raise and set out the alleged breach of this Protocol.

(b) The Member who has been complained about shall (within 10 working days) respond in writing to the complainant and copy that response to the Leader of the Council (if appropriate) and the relevant Group Leader(s).

(c) The Leader of the Council (if appropriate) and relevant Group Leader(s) shall (within 10 working days (or as soon thereafter as is reasonably practicable)) meet to discuss the complaint. If they both/all consider that the complaint is unreasonable, frivolous or vexatious, that shall be the end of the matter. If they both/all consider that the complaint is of a purely technical or minor nature they may invite the Member who has been complained against to make a written apology, in a form (and within a timescale) agreed between the Leader of the Council (if appropriate) and the Group Leader(s). Once that apology has been made that shall be the end of the matter unless the Member subsequently acts in a manner at variance with that apology.

(d) If the Leader of the Council (if appropriate) or any of the relevant Group Leaders considers the complaint is of a more serious nature than mentioned in the previous paragraph (or if the Member complained against fails to give the requisite apology) the complaint shall be referred to the Council's Monitoring Officer.

(e) Both the complainant and the Member complained about shall be advised in writing by the Leader of the Council (if appropriate) and the relevant Group Leader(s) of their decision.

(f) A complainant may at any time withdraw a complaint by notice in writing to the other Member and copy that notice to the Leader of the Council (if appropriate) and the relevant Group Leader(s).

9.3 Exceptions may be made to the procedures outlined in paragraphs 9.2 above if to do otherwise would conflict with the Council's policy on "Whistleblowing" or potentially prejudice a criminal or other investigation (whether in progress or reasonably contemplated in the future) or the complaint relates to a breach of the Code of Conduct for Members where it shall be lodged as a formal complaint and the Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members' Code of Conduct shall be followed.

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Local Protocol – Group Assistants

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2. Group Assistants as officers
3. The role of Group Assistants
4. Management arrangements
5. Assistants' rights to information
6. Obligations of Group Assistants
7. Groups without Group Assistants

1. Introduction

1.1 Group Assistants appointed and governed under section 9 of the Local Government and Housing Act 1989 and by the Regulations made under that Act and are subject to a number of restrictions. This Protocol is intended as a guide to the role and responsibilities of Group Assistants and the support and help they shall be given by other officers. It also sets out the limits of access that Group Assistants may have.

1.2 The three largest political groups (provided that they have more than ten per cent of the Council's elected membership) are entitled to appoint Group Assistants where the budget is allocated. It is recognised, however, that a qualifying group may not wish to take up an allocated post. This is a matter for each group to decide, but a decision by one group to decline to take up an allocated post does not prevent any other qualifying group from having a Group Assistant.

2. Group Assistants as Officers

2.1 Group Assistants are employees of the Council. Whilst, like all other Council employees, such assistants must be appointed on merit, regard may also be had to their political affiliations and political activities prior to their appointment.

2.2 Unlike other Council employees, Group Assistants:

- ***must not*** have any powers of the Council (or Cabinet) delegated to them; and
- ***must not*** manage any other Council employees (except secretarial and/or administrative support staff).

2.3 Like all other Council employees and members, Group Assistants may only use Council resources to undertake Council business.

2.4 Group Assistants are all **politically restricted posts**. In common with other Council employees in politically restricted posts, such assistants **must not:**

(i) stand as a candidate for election as a member of the House of Commons, Police and Crime Commissioner or a local authority;

(ii) act as an agent or sub-agent for a candidate who is standing in such an election;

(iii) canvas on behalf of any candidate standing in such an election;

(iv) canvas on behalf any political party; or

(v) act as an officer of a political party (or branch) if that would be likely to require:

(a) participation in the management of the party (or branch); or
(b) acting on behalf of the party (or branch) in dealings with non-party members.

2.5 Unlike other Council employees in politically restricted posts, Group Assistants ***also must not*****:**

(i) speak to the public in a manner likely to create the impression that they are speaking as an authorised representative of a political party; or

(ii) publish (or permit the publication of) any written or artistic work of which they are the author (or has acted in an editorial capacity) which is likely to create the impression that the publication is authorised by a political party.

3. The Role of Group Assistants

3.1 The role of Group Assistants is to support the group to which they are appointed and this includes the smooth running of group meetings and other group discussions. However, it does **not** include undertaking party political campaigning or party activity outside the Council's business.

3.2 Members and officers shall expect a Group Assistant to do some or all of the following, if asked to by the Group Leader of the relevant group:

Network to facilitate information gathering

(a) Establish and maintain links with the relevant group's headquarters, parliamentary and research bodies, regional local government bodies, and other relevant external groups.
(b) Develop a good knowledge of the functions and operations of the Council and its departments and establish effective working relationships with officers of the Council, including the Chief Executive and other senior officers.
(c) Liaise with members of the public and community groups, to collect a wide range of information, including in relation to issues that may be sensitive.
(d) Attend meetings of relevant local and national bodies, groups, agencies and associations.

Assist policy formulation and research for the Group

(e) Undertake research and analysis, obtain information and investigate matters to assist policy formulation and other developments or queries.
(f) Collate and analyse data for statistical purposes.
(g) Monitor the local media, relevant legislative and political developments, key projects and other issues that may impact on the group or Council policies.
(h) Gather information on and share good practice operated in other organisations.

(i) Disseminate information to the group and advise on items of interest or concern.
(j) Prepare reports and position and briefing papers, providing statistical information and recommendations on policy change and formulation, exercising judgement and decision making on likely repercussions on the local community and Council.

Providing administrative and organisational support to the Group Leader and group members as required

(k) Carry out general administrative duties.
(l) Draft speeches, motions, amendments and questions for the group.
(m) Liaise with the local media in respect of press statements by and interviews with the Group and act as a point of contact on behalf of the Group for media enquiries (but ***not*** act as a spokesperson on behalf of the Group (or Council) or issue press statements in their own name (or on behalf of the Council)).

(o) Pass on enquiries from members of the public, media, voluntary bodies and other local agencies/organisations on all aspects of Council policy and initiatives to the appropriate officer or group member.
(p) Maintain manual and computerised information retrieval systems used by and for the Group Leader and group members.
(q) Organise, prepare agendas for and minute group meetings, ensuring any follow-up action is carried out.
(r) Liase with the Group Leader and Chair to oversee and facilitate the effective servicing of group meetings, sub-groups and any associated meetings.
(s) Act as a point of contact for group members in order to aid group cohesion, co-ordination and efficient conduct of group business, ensuring the group is able to act swiftly and effectively, facilitating excellent group communication and reducing the likelihood of members sending out contradictory messages.
(t) Identify, in conjunction with the group, individual members' training needs and liaise with the Head of Governance Support regarding the provision of such training.
(u) Contribute to improving the efficiency and effectiveness of service delivery through maximisation of resources within the office and identifying and implementing initiatives for making improvements.

4. Management Arrangements

4.1 The appointment procedures to be followed in relation to the Group Assistants are set out in the Standing Orders in relation to Officer Employment.

4.2 Group Assistants will for most day-to-day purposes report to the Leader of the Group to which they have been appointed. The Group Leader will agree the work programme of the relevant assistant, set the priorities within that programme and undertake day to day supervision of the work.

4.3 The posts will be based in the Democratic Services Team and Group Assistants will be line managed by the Head of Governance Support (or such other officer to whom he/she may delegate responsibility) in relation to pay and conditions, equipment purchase and expenses claims, leave and sickness, team briefing, and learning and development. Leave arrangements will be subject to approval by relevant Group Leader, as appropriate.

4.4 'Group Assistants' annual appraisal will be undertaken either by the Head of Governance Support (after seeking structured feedback from the relevant Group Leader), or the Group Leader and the Head of Governance Support together.

4.5 If a Group Assistant feels they have been asked to undertake any role inappropriately, or that they have been denied access to people or information unfairly, then the assistant may raise that with the relevant Group Leader, as appropriate, or (if the assistant prefers) with the Head of Governance Support. In the event of a dispute between the Group Leader and the Head of Governance Support then the matter will be raised with the Chief Executive.

4.6 The Head of Governance Support (or such other officer as he/she may delegate responsibility to) shall be responsible for all disciplinary action (including dismissal) in relation to Group Assistants, but the Head of Governance Support shall consult with the relevant Group Leader in relation to any such disciplinary action.

5. Assistants' Rights to Information

5.1 Group Assistants have the same rights to information as elected members of the Council and fellow Council officers must be willing to provide the same information to such assistants as they would if a member of the Council sought the same help.

5.2 The rights of members to be given information are set out in detail in the Council's Constitution. Broadly, any member of the Council has a right to all Committee/Cabinet Reports and their background documents unless prohibited under the Constitution. In addition, members have a common law right to information on a "need to know" basis to enable them properly to undertake their duties as a councillor.

5.3 Most exempt reports and documents may also be available to members but there are a limited number of situations (such as matters of high sensitivity in relation to individual employees or legal cases) where documents will not be made available to all members or the Group Assistants. Such cases will need to be dealt with on their individual merits and in consultation with the Monitoring Officer.

5.4 Where Group Assistants have access to exempt or confidential documents they must not disclose their contents to anyone who is not equally entitled to the information, or to anyone outside the Council.

5.5 Group Assistants will direct all routine requests for information and advice to the relevant manager in the Business Unit concerned. Requests for information about more sensitive matters, or complaints about how a matter has been dealt with initially, shall be addressed to the relevant Director.

6. Obligations of Group Assistants

6.1 Applicants for a post of a Group Assistant will be asked to disclose any current or past political activities or affiliations.

6.2 Group Assistants will be expected to work mainly under their own discretion and initiative for the Group Leader. A day-to-day programme may be assigned by the relevant Group Leader.

6.3 Group Assistants will be expected to maintain the highest level of confidentiality and discretion at all times during the course of their work.

6.4 Group Assistants will be expected to maintain up-to-date knowledge of working practices, policy development, techniques and legislation and undertake professional development activities.

6.5 Group Assistants will be expected to adhere to the principles contained in the Council's Protocol in relation to Member and Officer Relations so far as that is not inconsistent with the specific obligations applicable to such assistants.

7. Groups without Group Assistants

7.1 It is possible that a Group that is entitled to a Group Assistant may choose not to take up the allocated post. A Group that has previously decided not to fill its allocated post may change its mind at any time by giving written notice to the Chief

Executive and the appointed post holder will then be entitled to the same rights as existing Group Assistants and subject to this Protocol.

7.2 There may be other groups in the Council (or individual members), who are not entitled to have a Group Assistant. Officers generally shall take care to ensure that if briefings are given to any one political group then the same level of information is given to groups (or individual members), who do not have a Group Assistant as to those that do. All groups are provided with opportunities to obtain information whether or not they have a Group Assistant.

Local Protocol – External Advisors to Political Groups

Contents

1. Introduction

2. Appointment and withdrawal of advisors

3. Role of advisors

4. Role of Senior Council Officers

5. Training on the functions of the Council

1. Introduction

1.1 The Political Groups provide the basis for effective overview and scrutiny of Executive functions, and are integral to decision making by Full Council.

1.2 This protocol supports the functioning of the Political Groups, by allowing them to compliment the skills and experience of the Group with the appointment of external advisors to provide them with advice and guidance.

2. Appointment and withdrawal of Advisors

2.1 The Group Leader will identify how they wish to recruit to the role of external advisor. The Group Leader shall consult with the Chief Executive in respect of any proposed appointment, including providing a CV for the proposed external advisor, and will not offer the role to an individual if the Chief Executive objects.

2.3 Appointments will be confirmed in writing by the Chief Executive. External Advisors will be appointed to coincide with political terms of office and the number of external advisors shall be limited to three per group.

2.4 Appointments will be merit based. In addition, advisors will have appropriate skills and experience relevant to the functions for example:

a) boardroom experience and strategic thinking;

b) a business background;

c) experience in the health or wellbeing sector;

d) experience in education;

e) experience in social care;

f) experience of community engagement;

d) recent and relevant commercial expertise;

e) experience of company management;

f) experience in finance and management accounting; and

g) other relevant experience.

2.5 The Chief Executive (or his/her deputy in his/her absence) may subsequently withdraw appointments if he/she considers this Protocol has been breached by an External Advisor.

2.6 The Council will not reimburse any expenses incurred by external advisors. Political Groups will be responsible for agreeing and reimbursing expenses (including parking in Council car parks) to external advisors whilst carrying out their role on behalf of the group.

2.7 External advisors will be provided with an ID card and will have access to the relevant Political Group room within Torquay Town Hall only.

3. Role of Advisors

3.1 External Advisors to the Political Groups can play an important role in providing guidance and advice to the political groups. The advisors can contribute to the mixture of skills within the Groups and bring relevant expertise, local representation and independence.

3.2 Advisors are expected to demonstrate the following personal skills and competencies:

a) drive, vision, independence and confidence;

b) challenging and proactive approach to committee business;

c) ability to motivate and engender respect;

d) negotiating and communication;

e) impartiality and integrity;

f) interpersonal skills – the ability to develop good relations;

g) ability to work as a team member and to be supportive of colleagues;

h) ability to make a constructive contribution to group discussion e.g. able to give a clear expression of ideas;

i) analytical approach to problem solving;

j) ability to formulate strategy; and

k) have a grasp of priorities.

3.3 The external advisors are not subject to the Code of Conduct for Members and are not required to register their interests. However, advisors must ensure that they do not unfairly seek to secure an advantage or disadvantage for any person.

3.4 Advisors shall consider whether they have individual interests on matters being considered by the Group and declare such interests (including details of those interests). When an advisor has declared an interest, this should be recorded by the Group Leader, and the Group Leader will determine whether it is appropriate for the advisor to remain in any discussions.

3.5 Whilst carrying out their duties, the advisors shall:

a) promote equality by not discriminating unlawfully against any person (including grounds of gender, race, disability, sexual orientation, religion, belief or age);

b) treat others with respect; and

c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of the Council.

3.6 An advisor must **not** disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the

consent of the Council's Monitoring Officer, or unless he/she is required by law to do so. Advisors access to exempt or confidential reports shall be at the discretion of the Chief Executive. External Advisors are required to sign a confidential agreement upon their appointment and will be reminded of the requirements of this Protocol when given confidential/exempt information.

3.7 It may be appropriate for external advisors to attend internal informal meetings. Prior consent from the Council's Monitoring Officer or relevant Director shall be obtained before attending such meetings.

4. Role of Senior Council Officers

4.1 The role of Senior Council Officers is to ensure the efficient and effective operation of the Council, these duties are outlined in the Officer Scheme of Delegation. They are non-political and duty bound to provide professional advice.

4.2 The External Advisors to Political Groups shall not seek to interfere directly in the day to day management of the Council. They shall not have access to officers, or place any demands upon officers.

5. Training on the Functions of the Executive

5.1 The External Advisors will be included, at the discretion of the Head of Governance Support, within the training provided to Members, to ensure that they are aware of the Council's powers, duties and decision making processes.

Local Protocol – Monitoring Officer

Contents

1. Requirement to designate an employee as Monitoring Officer

2. Employees who cannot be Monitoring Officer

3. Provision of staff, accommodation and resources for Monitoring Officer

4. Monitoring Officer to report cases of illegality and/or maladministration

5. Consideration of Monitoring Officer reports

6. Personal obligation of Monitoring Officer and appointment of Deputy Monitoring Officer

7. Disciplinary action against a Monitoring Officer

8. Local arrangements and conventions

9. What happens when things go wrong?

10. Procedure for members complaining about Monitoring Officer

11. Procedure for the Monitoring Officer to complain about a member

12. Exceptions to complaints procedures

1. Requirement to Designate an Employee as Monitoring Officer

1.1 The Council is required by Section 5 of the Local Government and Housing Act 1989 ("the 1989 Act") to designate one of its employees as the "Monitoring Officer". That person is required to perform the duties set out in sections 5 and 5A of the 1989 Act.

2. Employees who cannot be Monitoring Officer

2.1 The 1989 Act prohibits the persons designated as the Council's Head of Paid Service (currently the Chief Executive) and the Council's Chief Finance Officer from also being designated as the Council's Monitoring Officer.

3. Provision of Staff, Accommodation and Resources for Monitoring Officer

3.1 The Council is required by Section 5(1)(b) of the 1989 Act to provide the Monitoring Officer with "such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties [under Sections 5 and 5A] to be performed".

4. Monitoring Officer to Report Cases of Illegality and/or Maladministration

4.1 It is the Monitoring Officer's duty, if he/she believes that any proposal, decision or omission by the Council, has given rise to (or is likely to, or would give rise to) a contravention by the Council of "any enactment or rule of law" to prepare a report ("a Monitoring Officer Report") on the matter. A Monitoring Officer Report must also be prepared where the Local Government Ombudsman has found any "maladministration or injustice".

4.2 If the Monitoring Officer Report relates to a proposal, decision or omission by the Leader of the Council, an individual member of the Cabinet or the Cabinet (or on behalf of the Cabinet – i.e. by a committee of the Cabinet or an Officer, or (potentially) an area committee or joint committee) the report must be submitted to the Cabinet. If it relates to a Council function proposal, decision or omission (whether by Council, a Committee, sub-committee, joint committee, or an Officer) the report must be submitted to the Council.

4.3 In preparing a Monitoring Officer Report, the Monitoring Officer must, so far as is practicable, consult with the Chief Executive (in his/her capacity as the Council's Head of Paid Service) and the Chief Finance Officer.

4.4 As soon as practicable after preparing a Monitoring Officer Report, the Monitoring Officer must arrange for a copy to be sent to the every member of the Council.

5. Consideration of Monitoring Officer Reports

5.1 The Cabinet or Council (as appropriate) must consider a Monitoring Officer Report within 21 days of copies being first sent to the all members. The Cabinet or Council (as appropriate) are also under a duty to ensure that no step is taken to give effect to any proposal or decision to which such a report relates until the end of the first business day after the day on which consideration of the report is concluded. The Cabinet and Council's responsibilities under this paragraph may not be delegated.

5.2 As soon as practicable after the Cabinet has concluded its consideration of a Monitoring Officer Report, the Cabinet must prepare a report and send a copy to every member of the Council and to the Monitoring Officer. This report must specify what action (if any) the Cabinet has taken in response to the Monitoring Officer Report; what action (if any) it proposes to take (and when); and the Cabinet's reasons for taking (or not taking) action. (There is no equivalent obligation upon the Council to prepare a report in response to a Monitoring Officer Report.)

6. Personal Obligation of Monitoring Officer and Appointment of Deputy Monitoring Officer

6.1 The Monitoring Officer must perform his/her duties under the 1989 Act personally. However, where he/she is unable to act owing to absence or illness, these duties may be performed by such member of his/her staff as the Monitoring Officer has nominated as his/her deputy.

7. Disciplinary Action against a Monitoring Officer

7.1 The Local Authorities (Standing Orders) (England) Regulations 2001 require all local authorities to adopt certain mandatory Standing Orders in relation to the taking of any "disciplinary action" (as defined in those Regulations) against the Monitoring Officer. Similar provisions also apply in relation to the Head of Paid Service and the Chief Finance Officer. These are all contained in the Council's Standing Orders in relation to Officer Employment (see in particular Standing Order G5).

8. Local Arrangements and Conventions

8.1. This protocol applies to the Monitoring Officer, any Deputy Monitoring Officer/s and to any person/s appointed in line with paragraph 6.1 above. This Protocol also applies to the all members, including co-opted and independent members.

8.2 The Council expects that the Monitoring Officer will discharge his/her statutory responsibilities with determination and in a manner that will enhance the reputation of the Council.

8.3 In addition to the Monitoring Officer's formal statutory responsibilities the Council expects and encourages him/her to take a positive and proactive approach to promoting and encouraging high standards in ethics and probity amongst members and officers.

8.4 The Council expects the Monitoring Officer to draw to members' attention in clear terms not only matters where the Council may be at risk of being accused of illegality or maladministration, but also where the Council may be failing to have proper regard to Government guidance or best practice.

8.5 The Council recognises that, in general terms, the Monitoring Officer's ability to discharge his/her duties depends not only on excellent working relations with officers and all members but also on the flow of information and access to debate, particularly at early stages.

8.6 The Council expects the following arrangements and understandings to be followed by all officers and members, in order to help ensure the effective discharge of the Monitoring Officer's functions:

(a) If not a member of the Senior Leadership Team, the Monitoring Officer will have advance notice of those meetings (and immediate access to all agendas and reports) and the right to attend meetings and speak.

(b) The Monitoring Officer will be given ample advance notice of meetings (whether formal or informal) between Directors, the Leader of the Council and members of the Cabinet (or Committee Chairs), especially where the Chief Executive or any Director or Divisional Director or Head of Service considers that it is reasonably likely that any issues may to arise in relation to probity, legality, procedure or the Council's Constitution.

(c) All officers must immediately alert the Monitoring Officer to all issues of concerning probity, legality, procedure or the Council's Constitution, as soon as they become aware of those matters.

(d) The Monitoring Officer (or his/her staff) will be provided with copies of all reports to members before they are published and shall be entitled to have his/her advice included in those reports.

(e) The Monitoring Officer shall use all reasonable endeavours to develop good working relations with the Council's External Auditor and the Local Government Ombudsman.

(f) The Monitoring Officer shall use all reasonable endeavours to develop good working relations with the all members, particularly the Leader of the Council, Civic Mayor, Chair of the Council's Standards Committee and the Overview and Scrutiny Co-ordinator.

(g) The Council expects and encourages that the Monitoring Officer, Chief Finance Officer and the Head of Devon Audit Partnership meet on a regular basis to consider and recommend action in connection with current governance issues and other matters of concern regarding ethics and probity. The Council also expects that these three Officers will keep the Chief Executive (as Head of Paid Service) informed of any matters that any of them consider shall be brought to his/her attention.

(h) The Council expects the Monitoring Officer to make enquiries into any written complaint alleging misconduct by any member falling short of a possible breach of the Members' Code of Conduct in accordance with the Council's Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct.

(i) In carrying out any investigation (whether under the preceding paragraph or otherwise) the Monitoring Officer will have unrestricted access to any information held by the Council, any Council employee, or any member as he/she may require, subject only to any legal rights an individual may have to withhold information or to decline to answer any question.

(j) The Monitoring Officer will have control of a budget sufficient to enable him/her to seek Counsel's opinion or other expert advice on any matter concerning his/her functions.

(k) The Monitoring Officer will be responsible for arranging training for members on ethics, probity and legality.

(l) The Monitoring Officer will recommend to the Council changes to the Constitution where agreement is not reached with the Leader of the Council and Group Leaders (in accordance with Article 13 paragraph 13.02 (a)), following consultation with the Head of Paid Service, the Chief Finance Officer and any other person he/she considers appropriate.

(m) The Monitoring Officer may make a report to the Council from time to time, as he/she considers appropriate, on the staff, accommodation and resources necessary to discharge his/her function.

9. What Happens When Things Go Wrong?

9.1 From time to time the relationship between the members and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation, if necessary by the Chief Executive and the Leader of the Council or the appropriate Group Leader, this is not always possible.

10. Procedure for Members Complaining About the Monitoring Officer

10.1 Where a member considers that the Monitoring Officer has acted in breach of this Protocol and informal resolution of the matter has not proved possible, the member may put his/her complaint in writing to the Chief Executive. The written complaint must specify all incidents that the complainant intends to raise and set out the alleged breach of this Protocol.

10.2 The Chief Executive may disregard any complaint that he/she considers to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Chief Executive shall provide a copy of the written complaint to the Monitoring Officer and allow him/her to respond in writing. If the Chief Executive considers it appropriate, he/she may then invoke the Council's Disciplinary Procedure in accordance with Standing Order G5 of the Council's Standing Orders in relation to Officer Employment. Where the Chief Executive receives a written complaint he/she shall write to the member making the complaint to inform him/her of the outcome.

10.3 A complainant may at any time withdraw a complaint by notice in writing to the Chief Executive.

11. Procedure for the Monitoring Officer to complain about a member

11.1. If attempts at resolving matters informally have not been successful, where the Monitoring Officer considers that a member has acted in breach of this Protocol he/she may make a written complaint to the Chief Executive. The written complaint must specify all incidents that the Monitoring Officer intends to raise and set out the alleged breach of this Protocol and (if applicable) any other Council protocol/s.

11.2 The Chief Executive may disregard any complaint that he/she considers to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Chief Executive will give a copy of the complaint to the member concerned and invite his/her written comments (if any) within 10 working days.

11.3 The Chief Executive will give a copy of the member's response to the Monitoring Officer and invite his/her further written comments (if any) within 10 working days. If any material new issues are raised the Chief Executive may give the respective parties such further opportunities to make written comments as he/she shall consider reasonable.

11.4 The Chief Executive will then consider the written submissions and shall, unless he/she is satisfied that the complaint is clearly unjustified, refer the matter to the Standards Committee for consideration. The Standards Committee may uphold or reject the complaint (in whole or in part) and/or recommend to Council such action as it considers appropriate.

11.5 The Monitoring Officer may at any time withdraw his/her complaint by notice in writing to the Chief Executive.

12. Exceptions to Complaints Procedures

12.1 Exceptions may be made to the above procedures if to do otherwise would conflict with the Council's policy on "Whistleblowing" or potentially prejudice a criminal investigation (whether in progress or reasonably contemplated in the future).

Local Code of Good Practice – Members and Council Officers Involved in the Planning Process

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1. Introduction

1.1 Town and country planning is often highly contentious. It is seldom, if ever, an exact science: rather, it relies on informed judgement within a complex legislative and policy framework. Planning decisions frequently affect the daily lives of local people and the private lives of individuals. It is therefore essential that planning decisions be taken openly and impartially, with sound judgement and for justifiable reasons. The planning process must leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

1.2 An elected member on a Planning Committee has to balance representing the needs and interests of individual constituents and the community, with the need to maintain public confidence in the fairness and impartiality of the planning decision-making process. As the Nolan Committee (in its third report in 1997) acknowledged, this dual role can give rise to great tensions.

1.3 The purpose of this Local Code is to provide clarity in the way in which Members and officers of the Council will deal with planning matters and to set the standard of conduct, that other parties to the process are entitled to expect of the Council. Whilst this Local Code deals primarily with the determination of planning applications, the principles it endorses must be taken into account when considering forward planning (the Development Plan) and other planning policy issues, planning enforcement and all other planning matters.

1.4 In this Local Code, 'member' includes all elected members of the Council.

1.5 This Local Code is intended to ensure that the planning process is characterised by open and transparent decision making. Adherence to the Local Code will help to protect the Council against allegations of maladministration, legal challenges to its decisions and applications for costs based on grounds of 'unreasonable behaviour'. The Local Code's is based on the main principles are that decision-makers must:

(a) **not** favour unfairly (or appear to favour unfairly) any individual or group.

(b) **not** make decisions in advance of being presented with all the relevant facts.

(c) take into account all relevant considerations and not take into account irrelevant considerations

(d) not be biased in favour of any individual, bodies or locality or put themselves in a position where they appear to do so.

(e) by law determine all applications in accordance with the statutory development plans, unless material considerations indicate otherwise.

(f) have mutual respect for the positions of Officers and Members.

2. Relationship with the Council's Codes Of Conduct

2.1 This Code is concerned with the integrity of the planning process and maintaining public confidence in the planning system. Whilst there is a degree of overlap with the Council's Codes of Conduct for Members and Employees, this Local Code of Good Practice also imposes additional obligations in the specific context of Town

and Country Planning.

2.2 This Local Code contains advice based upon recommendations from the Local Government Association, the Royal Town Planning Institute (RTPI) and the Local government and Social Care Ombudsman ('the Ombudsman'). Failure to follow this Local Code may be taken into account in investigations into possible maladministration and may result in allegations that a Member or Council Officer has breached the Council's Codes of Conduct (and a Member being referred to the Monitoring Officer or an officer being subject to disciplinary action).

3. Application of this Local Code

3.1 This Local Code applies to both Members and Council Officers who become involved in the planning system. It applies to all planning decisions (whether taken at Council, committee, or by Council Officers under delegated powers).

3.2 The Code also applies to site visits, site review meetings and all other formal and informal contacts between Members, Council Officers, applicants, agents, objectors, landowners and other members of the public involved in the planning process. Whilst this Code primarily addresses the determination of planning applications, its underlying principles must also be applied to forward planning (the Development Plan process) and to the enforcement of planning control.

3.3 When determining whether there has been a breach of this Local Code the standard to be applied will be that of the reasonable member of the public with knowledge of the relevant facts and the standard of proof will be that of the balance of probabilities.

4. The Roles and Conduct of Members and Council Officers

4.1 Members and Council Officers have different but complementary roles. These are explored in detail in the Council's Local Protocol on Member and Officer Relations contained in Part 5 of the Council's Constitution. The guidance contained in that Protocol is relevant to the planning process.

4.2 Both members and Council Officers are subject to formal Codes of Conduct adopted by Torbay Council. In addition, Council Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI's) Code of Professional Conduct, breaches of which may lead to disciplinary action by the Institute.

4.3 The Council's Codes of Conduct for Members and Employees cover issues central to the preservation of an ethical approach to Council business. In particular, Members must register and declare pecuniary and non-pecuniary interests (as defined in the Code of Conduct for Members). Similarly, certain Council Officers must register and declare personal interests (as defined in the Employees Code of Conduct). However, the Codes also govern relationships between Members, Council Officers and the public and these provisions will impact on the way in which Members and Council Officers participate in the planning process. Of particular relevance to Members and Council Officers involved in planning decisions is the requirement under the Code of Conduct for Members that they;

'must act solely in the public interest and should never improperly to confer an advantage or disadvantage on any person or act to gain financial or other material

benefits for themselves, a member of their family, close associate or relevant person'

4.4 The planning system involves the consideration of private proposals in the context of the wider public interest. Much is often at stake in this process and opposing views are frequently very strongly held by those involved. Whilst Members and Council Officers need to listen to these views, if they are involved in the ***determination*** of a planning matter, they must **not** unfairly favour (or appear to unfairly favour) any person, body or organisation, or any group or locality, nor put themselves in a position where they **appear** to do so. **Members or Council Officers who do not feel that they can act in this way must ensure that they do not take part in the determination of a planning matter**.

4.5 Members and Council Officers must be especially cautious about accepting gifts or hospitality in the context of the planning process. As a minimum standard, they must comply with the requirements of the Council's Codes of Conduct and the Local Protocol on Gifts and Hospitality (see Part 5 of the Council's Constitution).

4.6 It is wholly unacceptable for any Member or Council Officers ever to be offered, receive or seek any gift as part of the planning process. It exposes the recipient to the most serious allegations of impropriety and may result in criminal charges for corruption (punishable on conviction by a long prison term and/or heavy fine) and/or referral to the Monitoring Officer.

4.7 All offers of hospitality (greater than a cup of tea, or equivalent) from people with any interest in a planning proposal should also be politely but firmly declined. If the refusal of very modest hospitality is likely to cause real offence, Members and Council Officers should ensure that it is of the minimum level and declare its receipt as soon as possible. Occasionally, in appropriate circumstances, it may also be reasonable to accept hospitality by way of a modest working lunch (or other meal) if that is conducive to the effective and professional conduct of a matter. Any hospitality accepted (or offered) should be recorded in the relevant member or employee Hospitality Book.

4.8 The functions of Council Officers are:

(a) To carry out the administrative tasks associated with planning applications, listed building consent applications and inquiries, to negotiate, where appropriate (and in accordance with this Local Code), with consultees, applicants and their agents.

(b) To prepare a comprehensive and balanced report normally with a clear recommendation of either conditional approval and/or with a requirement for a planning obligation, or refusal of an application when it is to be determined by a Planning Committee. (For further information see Section 13).

(c) To determine planning matters as authorised by the Council's Scheme of Delegation and in accordance with planning law and policies.

(d) To advise and assist Members and the general public in respect of any queries falling within the planning function.

4.9 In carrying out these responsibilities, Council Officers will provide:

(a) Impartial guidance to all parties including applicants, objectors, consultees and members and provide professional advice to the Council in accordance with the Royal Town Planning Institute's and the Institute of Historic Building Conservation Codes of Professional Conduct.

(b) Ensure, so far as possible, that all information necessary to make a decision has been obtained, evaluated and properly taken into account (when making a decision or formulating a recommendation) and (if applicable) properly reported to the decision making person or body.

5. Registration and Declaration of Interests

5.1 The Council's Codes of Conduct for Members require pecuniary and non-pecuniary interests to be registered and declared. These requirements **must** be followed scrupulously. Responsibility for fulfilling the requirements rests individually with each member and includes an obligation to ensure that their entries in the Registers of Interests are kept up to date.

5.2 All relevant pecuniary and non-pecuniary interests must be declared by members at every Council, committee or working party meeting where the interest is relevant to an item for discussion and on all other relevant occasions (such as site visits).

5.3 As the Council's planning function is a quasi judicial one, Members are also required to consider whether they have interests other than pecuniary and non-pecuniary interests that would mean a reasonable member of the public might consider a conflict of interest to arise members need to ensure that there can be no question of predetermination or bias. Where a specific planning application might reasonably be regarded as affecting your well-being or financial position, or the wellbeing or financial position of a relevant person, to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision, the Member should declare that interest and, depending on the nature of that interest, may wish to exclude him or herself from taking part in the decision.

(2) In the above paragraph "relevant person" would be –

(a) a member of the Member's family or any person with whom he or she has a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.

5.4 All Council Officers must comply with the Council's Employee Code of Conduct which is contained at Part 5 of the constitution and which imposes several requirements on employees including an obligation to declare any interests at meetings of the Council in which they are in attendance. When involved in the planning process Council Officers should also consider whether they should remain at meetings whilst a discussion and/or decision is taking place that relates to their interests and employees must always inform their line manager when any interest arises regardless of who is making the decision.

Where a Member has an interest in a planning application, which means that they will not be present when the application is under discussion (see part 7), he/she may attend the meeting, but only for the purpose of making representations, provided that the public are also allowed to attend the meeting for the same purpose. Having made his/her representations he/she must withdraw from the meeting room and can not vote on the matter.

Members and Council Officers are required to register requests to speak on a planning application, as set out in Standing Orders in relation to Council Meetings.

5.5 If a Member is a member in a personal capacity of an outside body that is making (or supporting or objecting to) a planning application it is very likely that they have a declarable non-pecuniary interest and quite likely that they have a pecuniary interest that will preclude them from taking part in the matter or even being in the room when the committee consider the matter. In these circumstances Members are strongly recommended to seek advice from the Monitoring Officer.

5.6 If a Member is a member of the Brixham Town Council, or Broadsands, Churston and Galmpton Neighbourhood Forum, or the Torquay Neighbourhood Forum ("relevant body") then in any case where the relevant body is considering a planning application the Member needs to consider whether they can properly act as both member of the relevant body and a Member of the Planning Committee. If a Member wishes to consider a planning application at the Planning Committee they should not be seen as directing support for or objection to any planning application as a member of the relevant body. In these circumstances Members are strongly recommended to seek advice from the Monitoring Officer. As a minimum in any consideration of a planning application by the relevant body the Member should declare an interest which should be recorded in the minutes of the meeting and should declare that as a Member of the Planning Committee, they are required to keep an open mind and consider all relevant material planning considerations when the planning application comes before the Planning Committee. The Member ought to declare an interest as a member of the relevant body when the application comes before the Planning Committee. A Member must not determine a planning matter if it would render such decision liable to challenge in the courts on the grounds of bias or pre-determination.

5.7 If a planning matter under consideration relates to an outside body to which a Member has been nominated by the Council, careful thought must be given by the member before deciding that it is appropriate to rely the general dispensation provided by the Monitoring Officer that Members appointed to such bodies can take part in decisions affecting those organisations.

5.7 Due to the nature of planning it may not be appropriate for a Member who is a Council representative on an outside body to vote on a planning matter affecting that body if they are a director or trustee of the outside body. This is because those roles impose very onerous legal obligations to act in the best interests of the outside body and may create an inherent conflict with the member's role as a councillor. If in doubt, the advice of the Monitoring Officer should be sought on this issue.

5.10 Where a Member who is a Council representative on an outside body (in whatever capacity, not just as a director or trustee) has taken a firm view on a planning matter,

either in meetings of the outside body or otherwise, they may be open to an accusation of predetermination and must **not** vote on the matter at any Council meeting. This is discussed more fully in part 6 below. Failure to follow this advice may result in a planning decision being challenged in the courts.

6. Bias, Pre-determination and Pre-disposition

6.1 Irrespective of whether a Member or Council Officer has a non-pecuniary or pecuniary interest in a planning matter, they must not determine (i.e. vote on, or take a decision in relation to) a planning matter if it would render such decision liable to challenge in the courts on the grounds of bias, pre-determination or pre-disposition. These are common law concepts which have been developed by the courts over the years and which are continuing to evolve.

6.2 The test for bias (or apparent bias) was summarised by Mr Justice Richards in the case of *Georgiou v. Enfield London Borough Council* in 2004 as follows:

' … in considering the question of apparent bias in accordance with the test in Porter v Magill, it is necessary to look beyond … personal interests and to consider in addition whether, from the point of a view of a fair-minded and informed observer, there was a real possibility that the Planning Committee or some of its' members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues.'

6.3 The courts will quash a decision even if just one person involved in the decision is tainted by bias. This would have very serious financial consequences for the authority and very likely result in significant reputational harm to it and the member or employee in question.

6.4 Pre-determination is very like bias, but probably has a less pejorative connotation. The Localism Act 2011 states that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—(a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and (b) the matter was relevant to the decision. **Regardless of this provision, Members must be aware that the courts can still determine a Member has not considered the application fairly and therefore quash any decision made. Should Members have any doubts as to whether they should take part in a decision of the Planning Committee they should seek advice from the Monitoring Officer in advance of the meeting.**

6.5 Pre-disposition is a more complex concept than pre-determination or bias. However, a Member who is associated with policy statements that are relevant to an application is at risk of being accused of having a pre-disposition to determinate that application in a certain manner. In these circumstances the Member should give very careful consideration before deciding that it is appropriate to vote on the matter at committee and if in any doubt seek the advice of the Monitoring Officer.

6.6 This situation might arise, for example, where a Cabinet Member is perceived as advocating certain types of development as part of their portfolio responsibilities. It would best preserve public confidence in the impartiality of the planning process if the member in question does not vote in the determination of planning applications that are relevant to his/her portfolio responsibilities. Members should seek advice at

the earliest possible stage from the Monitoring Officer but should avoid a potential conflict of roles wherever possible.

6.7 **The overriding principle is that a person should avoid being both an advocate for (or against) a planning proposal prior to the committee meeting and a member of the committee when the application is determined.**

7. Development Proposals by Members and Council Officers

7.1 Applications by Members, the Chief Executive, Directors, Divisional Directors, Heads of Service or Council Officers involved in the planning process (or by their friends or relatives as defined in the Codes of Conduct) will not be determined under powers delegated to Council Officers and must be determined by the Planning Committee unless they are of a minor nature and there are no objections. A record will be kept of such instances. The Divisional Director for Place Strategy may decide that this procedure will apply to any other officer of the Council on a case by case basis. The paramount consideration in exercising this discretion will be to maximise public confidence in the impartiality of the planning process.

7.2 Any Member or Council Officer to whom para 7.1 applies who makes an application (or who has any other interest in an application which means they will not be taking part in the decision) shall:

(a) Promptly inform the Divisional Director for Place Strategy. The Divisional Director for Place Strategy shall ensure that a written record of such interest is placed on the application file.

(b) Take no part in the processing or determination of the application.

(c) At the meeting of the Planning Committee, exercise the same rights to speak as a member of the public. In these circumstances the Member or Council Officer with an interest in the planning application may **not** speak at committee unless the general public has a right to do so. Nor may they even remain in the public gallery to observe or listen to the committee debate (failure to adhere to this requirement has been found to be maladministration). In these circumstances, the Member or Council Officer with the interest which excludes them from the decision-making may request a spouse/partner/agent/friend to attend and speak on their behalf.

(d) If in any doubt as to the nature of any interest, take advice from the Monitoring Officer in relation to the matter.

7.3 A Member or Council Officer who has an interest that means they will not be taking part in the decision may:

(a) make written representations in a private capacity, to the Planning Officer, disclosing the nature of the interest and not seeking any preferential treatment;

(b) use a professional representative, or arrange for a partner, close associate or family member, to make the application or representations; or

(c) in the case of Members, arrange for another Member to represent the views of the Member's constituents on such matters.

7.4 Where a Member or Council Officer has an interest in a planning matter, the Council's Codes of Conduct also require that they must not seek ***improperly*** to influence a decision about a matter.

7.5 It is important to emphasise that *improperly* does not imply that a Member or Council Officer is to be precluded from seeking to explain and justify their proposal to a planning officer (whether over the phone, face to face or in writing) in advance of consideration of the matter by committee.

8. Planning Applications by the Council

8.1 The Council itself requires planning permission to carry out or authorise certain types of development on land it owns. These applications will generally be determined by the Planning Committee (or Council) and this Local Code will apply to such applications. The Divisional Director for Place Strategy may determine such applications if they are (a) applications of a minor nature and there have been no objections, (b) applications which are a repeat of, or contain only non-material amendments or material minor amendments

9. Lobbying of and by Members

9.1 If Members are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on planning matters. **Lobbying is a normal and perfectly proper part of the political process.** Local concerns about development proposals need to be adequately aired as part of the planning process. **However, a Member must not lobby or act as advocate for (or against) a planning proposal and vote on the determination of the matter.** Members must comply with the guidance in relation to pre-determination as set out in part 6 of this Local Code.

9.2 Members may organise support for or against a planning application or lobby other Members. However, whilst they may be able to speak at the committee meeting when the application is determined they must not vote on the item.

9.3 Great care is required by Members and Council Officers in order to maintain public confidence in the integrity and the impartiality of the planning process and the Council. A failure to follow the advice in this section may result in a finding of maladministration against the Council or a legal challenge to the Council's decision.

9.4 When being lobbied members in general, but members of the Planning Committee in particular, must take care about stating how they will vote before they have considered all relevant matters at committee. In such circumstances it is preferable for a Member to restrict their comments to procedural advice and to encourage those lobbying to speak or write to the planning officer in order that their opinions can be included as part of the decision-making process.

9.5 Where the Monitoring Officer (or his/her representative at committee) reasonably believes that a Member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the committee, he/she will advise the member that it would be inappropriate for the member to vote on the application however **it is the Member's decision on whether to vote**.

9.6 Whilst lobbying is a normal and perfectly proper part of the political process, in order to protect their impartiality and integrity from being called into question, Members of the Planning Committee must so far as is practicable, minimise their contacts

(including social contacts) with known developers and agents.

9.7 Members shall normally avoid requesting information from professional applicants or objectors and direct their enquiries to the planning officer. If interested parties provide members with new information or additional documents they shall pass this to the planning officer as soon as possible. Where a person requires planning or procedural advice, he/she shall be referred to the appropriate officer but this will not preclude Members from giving information to general members of the public to assist them in understanding the planning process.

9.8 If a Member is approached in their role as ward councillor by a third party, neighbour, potential objector or supporter of a planning application, then it is natural that they will want to consider the representations. This can help Members' understanding of the issues and concerns associated with an application. However, Members must take care to avoid expressing an opinion which may be taken as indicating that they have already made up their minds on an issue before they have heard all the evidence and arguments at committee.

9.9 Unless a Member is prepared to refrain from voting on an application (i.e. to be regarded as an advocate for (or against) the proposed development) they must take great care to maintain impartiality when attending public meetings in relation to planning matters, or during telephone discussions with a constituent. During such meetings or discussions it is preferable for no view on the merits or otherwise of a proposal to be given

9.10 Where a Member is lobbied they shall explain clearly that whilst they can listen to what is said, it would prejudice their impartiality to express an intention to vote one way or the other. Where Members are invited to attend such meetings, wherever possible they shall only do so in the presence of a Council Officer and, in any event, shall always declare such attendance prior to the consideration of the item at committee. Any written representation received should be passed to the Planning Officer for inclusion on the application file and placing in the public domain. Requests for information on procedural advice relating to planning applications should be directed to the Planning Officer to avoid misrepresentation and the possibility of a poor perception being gained of the impartiality of the planning process.

9.11 Members are encouraged where practicable (and particularly if the application is highly contentious) to keep a dated written record of lobbying and the response given. Appendix 1 contains a form designed for this purpose. In accordance with this Local Code it will be considered to be good practice for members to hand in any completed form at the relevant committee meeting. All completed records must be made available to the Monitoring Officer on request.

9.12 Where a Member's ward may be affected by a planning application which is to be considered by the Planning Committee, but that councillor is not a member of the committee, he/she may address the committee in order to represent the views of residents. The procedure is laid down in the Council's Standing Orders.

9.13 Non-voting Members should remember that to be effective in representing the views of interested parties, and not mislead them about the planning decision process, they should be fair in their representations and not just act as an advocate for one point of view without considering the broader planning context. When lobbied, they should,

(and advise others to), consider all aspects of the development which includes the relevant planning policies and the wider interests of the community as a whole. Members should advise that local opposition to, or support for, a planning proposal is not in itself a ground for refusing or granting permission unless founded upon valid planning reasons which can be substantiated. Where opposition to/support for a scheme is not founded upon real planning argument they should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition/support both before and at the Planning Committee. To do so may raise false expectations of a decision which cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Member.

10. Pre-application Discussions

10.1 It is both proper and important that Members involve themselves in discussions with developers, their constituents and others about planning matters. However, potential difficulties will be minimised if all members adhere to the general guidelines that are set out in Appendix 3. These have been derived from 'Probity in Planning' and 'Positive Engagement – a guide for planning councillors', produced collaboratively by a number of organisations including the Government, Local Government Association, Royal Town Planning Institute and Standards for England.

11. Discussions and Negotiations with Applicants

11.1 Formally convened pre-application meetings are organised by officers to negotiate, where possible, an acceptable scheme prior to a planning application being submitted.

11.2 In any discussions on planning issues, it will always be made clear at the outset that the discussion and any views expressed are based on the planning officer's professional judgement but will not bind the Council to any particular decision. This is because, by the nature of such meetings, not all the relevant information will be to hand and consultations with interested parties will not normally have taken place.

11.3 Advice given will be consistent and based on the Development Plan, relevant national, regional and local planning policies and any other material planning considerations. Every effort will be made to ensure consistent interpretation of planning policies by different planning officers.

11.4 Written notes shall be taken at all such meetings detailing attendees, the nature of the proposal, advice sought and given and any other matters discussed. Notes shall be retained in a form readily retrievable by planning officers and their managers. Any request to inspect such notes shall normally be granted during the pre-application stage unless confidentiality has been requested (for example, if the developer's interest in the site is commercially sensitive).

11.5 Confidentiality will not be expected to apply once a proposal has become the subject of an application. However, in exceptional circumstances, some limited information relating to the commercial viability of a development may need to remain confidential. Where appropriate more than one officer will attend meetings on major planning issues. As a matter of good practice, a follow-up letter will be sent recording the planning officer's comments. In the event that a planning application is subsequently received any such letter shall be referred to in any committee report and included in the schedule of representations.

11.6 Members may request or be encouraged to take part in the pre-application discussions with potential applicants. When Members are involved, they will normally be advised by appropriate officers (which will normally include a senior planning officer). Member involvement in such discussions will be recorded on the planning file.

12. Officer Reports to Committee

12.1 Reports to committee on planning matters must be accurate and cover all relevant points and no irrelevant matters.

12.2 The planning officer's report will include a full description of the site and any related planning history. It will refer to the provisions of the Development Plan and all other relevant material planning considerations and, where appropriate, any relevant issues arising under the Human Rights Act 1998 and any other relevant legislation. It will include the substance of representations and the views of consultees. The only information which may be taken into account in determining planning application is that formally submitted to the planning officer in advance of the meeting date, so that he or she can assess it. This will prevent the Committee being misled or the decision being challenged on grounds of legality or maladministration. No papers shall be permitted to be circulated on the day of the meeting.

12.3 The report will clearly identify the key planning issues and material considerations to be taken into account. The report shall contain the merits for and against the application and will give a technical appraisal that clearly justifies the stated recommendation. Oral reporting to the committee (other than to up-date an existing report), will not normally occur unless a late representation identifies a material planning consideration which has not been addressed in the report in which case it will be reported by the planning officer together with any response by the applicant.

12.4 All reports will normally have a written recommendation either to conditionally approve or refuse the application. A planning officer may recommend that the matter is deferred if information needed for the meeting has not arrived or if significant issues have arisen since the preparation of the report which warrants deferment.

12.5 Where the recommendation is one of conditional approval, then all the proposed conditions will normally be attached to the report unless there is some substantial and exceptional reason preventing this. To be lawful a planning condition must meet the six tests specified in the National Planning Practice Guidance.

To be lawful a condition must be:

(a) Necessary; and

(b) Relevant to planning; and

(c) Relevant to the development to be permitted; and

(d) Enforceable; and

(e) Precise; and

(f) Reasonable in all other respects.

12.6 The report must also give full details of any requirement for a Planning Agreement under Section 106 of the 1990 Act (as amended). The subject matter of the planning obligations to be included in the Agreement should be justified in order to facilitate discussion at the Planning Committee. The National Planning Practice Guidance provides advice on the use of planning obligations.

12.7 Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Planning obligations should not be used where the development proposed could be made acceptable through the use of planning conditions. A planning obligation may only be sought where all of the following tests are satisfied:

(a) it is necessary to make the proposed development acceptable in planning terms; and

(b) it is directly related to the proposed development; and

(c) it is fairly and reasonably related in scale and kind to the proposed development.

12.8 The Secretary of State emphasises that the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought and sold. It is not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

12.9 The officer's recommendation must specify the reasons for refusal/approval and refer to all Development Plan policies and all relevant policy guidance which justify that decision.

12.10 Where the planning officer's recommendation is contrary to the provisions of the Development Plan this must be clearly stated together with the material considerations which justify the recommendation.

13. The Decision-Making Process - General

13.1 In determining all types of applications submitted pursuant to the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Hazardous Substances Act 1991, the Council will follow the relevant Government guidance, as interpreted by the courts.

13.2 The planning system involves making decisions about the use and development of land. Section 38(6) of the Planning and Compulsory Purchase Act requires that all planning applications are determined in accordance with the Local Development Plan/Framework unless material planning considerations indicate otherwise.

13.3 When determining planning matters Members and Council Officers must approach each application with an open mind and carefully weigh up material planning considerations, particularly with reference to the Development Plan and national policy guidance. They must disregard all considerations that cannot lawfully be taken into account (for example that a planning application has been made retrospectively).

13.4 No group of Members (for example, from the same political group, or from the same

ward) and no informal meeting of a particular group on a committee may be used to decide how Members shall vote in a committee determining an application. **It is unlawful for a planning decision to be subjected to the discipline of the political whip and to do so would also constitute maladministration.** This does not preclude the holding of pre-meetings prior to the commencement of a formal planning related meeting in order to discuss the business management of the forthcoming public meeting (but **not** the merits of individual agenda items). However, such pre-meetings must be open to **all** members entitled to attend the subsequent public meeting and the rules relating to the declaration of interests must be strictly applied.

13.5 Where an application is to be determined by the Planning Committee there will be an opportunity for interested parties to address the committee prior to the determination of the application. The procedure is laid down in Council's Standing Orders. No papers shall be permitted to be circulated on the day of the meeting.

13.6 Members and Council Officers with a personal interest in an application must declare the interest in accordance with the Council's Codes of Conduct and this Local Code and, if required by the relevant Code of Conduct, they shall then withdraw from the meeting before any discussions take place on the matter.

13.7 Members and officers will address one another during the debate in a proper manner and through the Chair. Members shall respect the impartiality and integrity of officers.

13.8 Senior legal and planning officers shall always attend meetings of the Planning Committee to ensure that procedures have been properly followed and planning issues properly addressed.

13.9 In discussing and determining a planning application, Members will confine themselves to the planning merits of the case and the reasons for making a final decision shall be clear, convincing and supported by planning evidence.

13.10 On occasions the Planning Committee will disagree with the planning officer's recommendation. Planning committees are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to the application. However, the same strict legal requirements have to be met, as the reasoning in the planning officer's report will no longer apply.

13.11 Where Members propose approval with conditions or wish to impose additional conditions, they must apply the same criteria referred to at paragraph 12.5 above. They must be of the opinion that if the condition were not applied then the planning application ought to be refused. Conditions shall be tailored to tackle specific problems rather than impose general control. Where Members are of the view a planning agreement is appropriate, then the same considerations as outlined in paragraph 12.7 above shall be applied.

13.12 The committee shall not approve any application (or other matter) which would (in the opinion of the Divisional Director for Place Strategy) not be in accordance with the Development Plan unless the Divisional Director has recommend approval and the decision of the Committee is consistent with the Divisional Director's recommendation.

13.13 If, contrary to the recommendation of the Divisional Director for Place Strategy, the Committee consider that an application (or other matter) shall be approved and such approval is not in accordance with the Development Plan, then the item shall be referred to Council for determination.

13.14 Where a Member proposes to recommend approval contrary to an officer's recommendation of refusal, the Chair will give the planning officer an opportunity to respond to that recommendation and to discuss any appropriate conditions (and/or Planning Agreement). The planning officer may request further time in order that appropriate conditions (and/or the terms of a Planning Agreement) may be drafted.

13.15 Where a Member moves refusal of an application contrary to the officer recommendation, the Member must give reasons based upon planning grounds as the Member may be required to speak at any subsequent appeal hearing. Such reasons must be sufficiently clear and precise to enable the planning officer to apply relevant Development Plan policies to those reasons.

13.16 Where it is the planning officer's professional view that a proposal for refusal is improper, this advice will be given to the committee and, where necessary, further advice shall be given by the Solicitor as to the potential implications of such a decision.

13.17 Before any matter is put to the vote any member of the committee may request the Chair to ask the clerk to read to the meeting the full text of the proposal to be voted upon. This is a mandatory requirement if a proposal does not follow the officer recommendation.

14. Planning and Human Rights

14.1 The Human Rights Act 1998 requires all public bodies to exercise their powers and duties in ways that do not breach the rights of individuals, as identified in the European Convention on Human Rights.

14.2 The following provisions of the European Convention on Human Rights are most likely to be relevant to the planning system:

Article 6: the right to a fair trial. In the context of planning, this means that where their property or life is affected by a decision, everyone is entitled to a fair and public hearing (within a reasonable time) by an independent and impartial tribunal established by law. This is provided for applicants who are dissatisfied with a planning decision through the appeals process and for objectors through the availability of judicial review. However, the principles underpinning this Article also require openness and transparency throughout the decision-making process.

Article 8: the right to respect for private and family life. Everyone has the right to respect for his or her private and family life, home and correspondence. This may only be subject to interference by a Public Authority in accordance with the law and only *so far as is necessary in a democratic society.* This means that any such interest must be justifiable on the grounds of national security, public safety, the national economic well being, the prevention of disorder or crime, the protection of health or morals or for the protection of the rights and freedoms of others.

The First Protocol – Article 1: protection of property. Every person (including

legal persons, such as companies) is entitled to the peaceful enjoyment of their possessions. This may only be restricted or prevented in the public interest in accordance with the law. Accordingly, whilst the Council may enforce planning laws where it is necessary to control the use of property in accordance with the general interest, its action must be *proportionate* in all the circumstances.

15. Decision Making – Delegation to Council Officers

15.1 The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Planning Committee; and those that must be determined by Council. The Chair or (in his/her absence) the Vice-chair of the Planning Committee may in exceptional circumstances request the Divisional Director for Place Strategy to refer a planning application which would normally be delegated to Council Officers to the Planning Committee. The terms of reference of the Planning Committee are set out in Part 3, Schedule 5 of the Council's Constitution.

15.2 Where officers are determining applications under their delegated powers, the Case Officer processing the application will complete an officer report which must record that all material planning considerations have properly been taken into account. The Case Officer will then make a recommendation to the Team Leader. The Team Leader will assess the report and recommendation and make the final decision on behalf of the Divisional Director for Place Strategy.

15.3 In the case of a divergence of view and the rejection of the Case Officer's recommendation, the Team Leader's decision and planning justification must be recorded in full on the file. In the event that the Case Officer is a team leader then any delegated decisions taken by that officer will be referred to the Divisional Director for Place Strategy for the final decision, which shall be recorded in the same manner.

16. Public Speaking and presentation at Planning Committees

16.1 Members of the public are entitled to speak at meetings of the Planning Committee and Council when planning applications are being considered. Details of this procedure are set out in Standing Orders in relation to Council Meetings.

16.2 Members of the public may not present any written materials, photos or mock-ups at the Planning Committee meeting. Members of the public are able to submit written representations through the Council's website at torbay.gov.uk/planningapp and searching for the property or by emailing planning@torbay.gov.uk up to 4 pm the Friday before the meeting, which Members of the Planning Committee will be able to view prior to the meeting, this includes photos or attached documents. Members of the public who have registered to speak may refer to such documents when speaking at the Planning Committee meeting (Note: where speakers intend to refer to submitted documents at the Planning Committee meeting this must be agreed with the Planning Officer in advance of the meeting so that they can include it in their presentation).

16.3 Members of the public may submit models for consideration at the Planning Committee meeting:

a. provided they are submitted to the Case Officer ten clear working days before the date of the Committee meeting;

b. provided they are undertaken by a professional with an accurate scale and fair representation of the existing and proposed changes;

c. subject to the Case Officer, in consultation with the Chair, determining that they are a fair interpretation of the planning application; and

d. where models are accepted they will be available for inspection in the Committee meeting room at 5 pm to enable all parties to access them prior to the start of the meeting (this will be noted on the Committee agenda for that item).

17. Role of Council Officers Where a Recommendation is not Followed

17.1 The Nolan Report considered the role of officers in the planning process and concluded that "*Planning Officers exist to advise Planning Committees, which are entitled to reach their own decisions, by attaching different weights to the various planning criteria which are relevant to an application*".

17.2 Council Officers shall, therefore, give full support to the Council's case where an appeal is made against the Local Authority's decision whether it be by written representations, informal hearing or public inquiry. However, in doing so, planning officers shall adhere to the good practice advocated by the Royal Town Planning Institute and 'shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions'. The same principles shall apply to other Council Officers who have to act in accordance with their own professional codes.

17.3 Where, however, a planning officer believes that a committee decision is based on no reasonable planning grounds and is therefore "improper" they will normally seek to draw this to the attention of the Committee and must draw this to the attention of the Council's Divisional Director for Place Strategy and the Monitoring Officer.

17.4 Where a planning officer has advised a committee that its decision is, in their professional opinion, improper then that officer will only be required to give evidence on appeal in exceptional circumstances and having regard to any limitations imposed by the Royal Town Planning Institute's Code of Professional Conduct. The advice of the Council's Monitoring Officer will be sought if such a situation arises. In such circumstances members may be asked to give evidence on behalf of the Council at any appeal.

18. Committee Site Visits

18.1 Council Officers will make arrangements for site visits by all committee members prior to the scheduled committee meeting. Site visits can be requested by a Member but shall only be requested where a site visit will clearly assist the Members in determining the planning application. For example:-

(a) When the impact of the proposed development is difficult to visualise from the plans and supporting material.

(b) There is a good reason why the comments of the applicant or objectors or consultees cannot be adequately understood from written or verbal presentation at the Committee meeting.

(c) When the proposal is particularly contentious.

18.2 Efforts will be made to ensure that all Members involved in the decision and the Planning Officers attend each site at the same time. This is because:-

(a) Members have no right of access to land.

(b) Members may be subject to lobbying or to accusations of bias.

(c) Separate visits are likely to result in confusion about the material planning considerations.

(d) Planning officers will be able to explain the plans and answer any technical questions.

18.3 Site visits will only be used for gathering factual information, seeking clarification from the planning officer and making a visual assessment. Therefore, Members must not discuss the merits of the case at the site inspection with any applicants, agents, objectors (or supporters) or members of the public who are present. The site visit is not part of the formal consideration of the application and public rights of attendance do not apply.

19. Site Review Meetings

19.1 The overwhelming majority of planning applications can be dealt with quite appropriately by Council Officers under delegated powers. However, given the inherently controversial nature of planning it is sometimes the case that even very straight forward applications excite strong feelings and generate objections. In an attempt to increase public confidence in the transparency and fairness of the planning system the Council has adopted a system of holding informal Site Review Meetings as a mechanism for hearing concerns from local residents and deciding whether an application will be determined under delegated powers or referred to the Planning Committee for determination.

19.2 The Council has adopted a protocol in relation to Site Review Meetings and this is set out in Appendix 2.

19.3 The requirement to hold Site Review Meetings may periodically be suspended by the Divisional Director for Place Strategy in exceptional circumstances, including for example during a pandemic.

20. Reviews of Decisions

20.1 The Planning Committee will review, at least annually, a sample of the implemented decisions made by that committee to assess the quality of those decisions. Visits will be incorporated into the schedule of site visits arranged for that committee. The purpose is to improve the quality and consistency of decision making and will assist in reviews of planning policy and monitoring the quality of decisions as required by Best Value Performance Indicators. Members and officers will undertake reviews

together and include consideration of whether there is a need to initiate a review of any policies or practices.

20.2 At quarterly meetings of the Planning Committee, the results of recent Planning Inspectorate decisions will be reported. A short report will be provided to identify whether the decision was a delegated officer decision or one taken by the committee and briefly outlining the main issues.

21. Enforcement of Planning Control

21.1 The Council has various powers to take enforcement action in respect of breaches of planning control. These powers may arise for example if development has been carried out without the requisite planning permission or a person has failed to comply with a condition imposed on a planning permission. Enforcement powers also exist in relation to special controls such as planning obligations, listed buildings, Tree Preservation Orders and untidy land.

21.2 The Council has dedicated Planning Investigation Officers who can be contacted by a Member or member of the public if they believe a breach of planning control has occurred. The Planning Investigation Officer will need the address of the planning site and brief details of the alleged breach in order to undertake initial inquiries. The Planning Investigation Officer has specific powers under the 1990 Act to investigate breaches of planning control and therefore once the matter has been referred to the officer he/she will take responsibility for the investigation. The officer will keep the Member or member of the public informed as to progress as appropriate.

21.3 The completion of the Planning Investigation Officer's investigation may lead to one or more of the following:

- A finding of fact that no breach of planning control has occurred;
- A finding that although there has been a breach of planning control it is purely technical in nature or so minor that it is not expedient or in the public interest that it does not justify any further action being taken;
- Where there has been a breach of planning control, but the officer considers a conditional grant of planning permission might be acceptable, an invitation to the landowner/developer to submit an application for planning permission;
- In controversial or difficult cases, or those cases outside officers' delegated powers, a report being submitted to the Planning Committee for determination
- Where the planning merits of the case so justify, instructions to the Council's Legal Services Manager to take enforcement action.

21.4 Starting development in anticipation of receiving planning permission (premature development) is not in itself a ground for justifying refusal of planning permission or the taking of enforcement action. However, the Divisional Director for Place Strategy are notified of instances of premature development and the landowners/developers advised in writing that such activity is carried out at their own risk and may be the subject of planning enforcement action.

22. Training in the Planning Process for Members

22.1 All members of the Council on being elected must undertake initial training on the planning process. This will be provided by the Council in a seminar and/or workshop programme. This training will include guidance on Town and Country Planning with particular reference to the material considerations which Members have to take primarily into account. Members of the Planning Committee will be given refresher training when changes are made to planning law or procedure and will also receive ongoing training in relation to development management.

22.2 All elected Members are required to comply with the core requirements of the Council's annual Members' Development Programme which includes Development Management training.

22.3 Members who have not undertaken the relevant Development Management training shall not be permitted to be a member of or substitute for other Members on the Planning Committee, or take part in consideration of any Development Management matters referred to full Council, and should not make themselves available for attending Site Review Meetings.(See Para 19).

22.4 Any failure to comply with the core Development Management training requirements may be referred to the Monitoring Officer and to the appropriate Group Leader.

23. Complaints

23.1 Any issues of concern arising from this Code may, in the interest of speed, be raised informally with the Monitoring Officer in the first instance. Should a member of the public wish to make a formal complaint within the framework of the Council's complaints system then they shall write to the Divisional Director for Place Strategy, Torbay Council, Town Hall, Castle Circus, Torquay, Devon, TQ1 3DR.

23.2 Where a Member alleges a breach of this Code in respect of another Member, they will refer the matter to the Council's Monitoring Officer.

23.3 Where there are issues of maladministration, these can be referred to the Local Government Ombudsman.

Appendix 1

Planning Attendance Note

Planning application Number:
Development Site:
Enquiry from:
Nature of Representations:
Response Given:
Member:
Date:

Appendix 2

Site Review Meetings Protocol

1. The Government has made it clear to Local Planning Authorities that in order to speed up the planning process the vast majority of planning applications should be determined by officers using delegated powers.

2. Most planning applications are now initially identified as being appropriate for determination by the Divisional Director for Place Strategy under delegated powers. Only major applications (those for 10 or more residential units, or over 1000 square metres of new floor area) will automatically be referred to the Planning Committee. The Divisional Director for Place Strategy may refer other applications to the Committee for determination if he considers it appropriate. In determining whether to refer other applications to the Committee for determination the Divisional Director for Place Strategy may consult with the Chair of the Planning Committee and/or any relevant Ward Members.

3. In deciding whether or not to refer a planning application to the Planning Committee for determination, the Divisional Director for Place Strategy will have regard to the number and complexity of planning issues the application raises. This is not necessarily reflected in the number of objections received and no particular number of objections (or letters of support) will ensure that any particular application is referred to Committee.

4. Where officers are recommending approval of an application and there are objections on valid planning grounds made within the 21 day period for response, the Ward Councillors will be advised of the objections by e-mail and be given 5 working days to respond to officers, either by telephone or e-mail. Having considered the merits and significance of the application, Ward Members may, in exceptional circumstances, request that a Site Review Meeting (SRM) is arranged. The Ward Member must be available in the next 7-10 days so that the SRM can be arranged in that timeframe. Officers will proceed to arrange the meeting unless in exceptional circumstances there are clear differences of opinion between the officers and the Member about whether such a meeting is necessary. In these circumstances the matter will be referred to the Chair of the Planning Committee for decision.

5. Where there are 5 or more objections to an application and officers are recommending approval, the same procedure as described above will apply in relation to the need for an SRM. Officers will however automatically discuss with the Chair of the Planning Committee whether the application should be heard at Committee. Again, it will be the decision of the Chair as to whether that application should be determined at Committee or under delegated powers.

6. The purpose of a Site Review Meeting is to decide whether a decision should be made under delegated powers or referred to the Planning Committee for determination. The meeting is not intended to debate or argue about the issues but to allow everyone to look at the site, view and understand fully the proposals and hear the views of the applicant and the objector(s).

7. After the Site Review Meeting, the Senior Planning Officer present will discuss the matter with the Ward Councillor(s) in attendance and then make a recommendation to the Divisional Director for Place Strategy as to whether or not the matter should be

referred to Committee for determination. If in exceptional circumstances the Divisional Director for Place Strategy is not minded to agree with the views expressed by any Ward Member as to whether or not to refer the matter to Committee, he will consult with the Chair of the Planning Committee who will make a decision.

8. All parties will be informed in writing of the outcome of the Site Review Meeting.

9. Site Review Meeting may be terminated by the Planning Officer in attendance in the event that any person present fails to adhere to the principles of this Protocol or fails to treat other people present with courtesy and respect.

10. In all cases, Officers will continue to make recommendations in reports either for signing off by team leaders or for consideration at Committee, and Officer Reports will highlight and discuss the merits of objections, indicating how the objections raised have been considered in reaching the decision.

Appendix 3

Discussions with Third Parties – Do's and Dont's

It is important that members involve themselves in discussions with applicants, their constituents and others about planning matters. The Audit Commission has recommended that councils should develop effective approaches to pre-application discussions involving councillors, to ensure the issues relating to proposed planning applications are identified, discussed and, if possible or necessary, accommodated early in the process. Such discussions have no binding effect on either party; the Council encourages developers to engage in full and transparent public consultation at an early stage so that both the Council and the applicant are aware of issues arising and members can observe and listen to a range of points of view. Potential difficulties will be minimised if all members adhere to the following general guidelines.

Do

- Read the Council's Local Code of Good Practice in relation to Planning Matters
- Attend discussions organised by officers before a planning application is made, **not** after it has been submitted to the Council
- Structure discussions and always be accompanied by a planning officer
- Keep an open mind; refrain from expressing strong views directly to a prospective applicant rather than via the planning officer during the pre-determination stage; preface any discussion with appropriate and clear disclaimers; keep a dated note of meetings and calls; and make **clear at the outset** (and in subsequent contacts) that discussions are **not** binding
- Adhere to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- Where appropriate encourage positive outcomes
- Request and participate in training on planning and probity issues
- Refuse any gift however insistently offered
- Attend developer presentations to be fully informed prior to an application being submitted
- Attend public consultation meetings as part of your role in taking fully into account public opinion and relevant planning issues emerging

Do Not

- Meet applicants alone, or put yourself in a position where you may appear to favour unfairly any person, body or group or may be misinterpreted. Even a 'friendly' private discussion with an applicant may cause others to question your impartiality
- Accept hospitality unless refusal of minimal hospitality would be impolite
- Expect to lobby and actively support (or resist) an application and still vote at Committee
- Remain in any public meeting where you have a pecuniary interest
- Seek improperly to influence others or put pressure on them to support a particular outcome in relation to a planning matter
- Invent local guides on probity in planning which are incompatible with current national guidance and best practice
- Advise, correspond or negotiate (or give the appearance of so doing) with applicants

This list of do's and don'ts is derived from a range of national documents including

principally “Positive Engagement” (a guide for planning councillors), and “Probity in Planning” produced collaboratively by a number of organisations including the Government, LGA, RTPI and Standards for England.

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Local Code of Good Practice – Members and Employees Involved in the Licensing Process

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12. Committee site visits
13. Review of decisions
14. Training in the licensing process for members

Appendix 1: Licensing Attendance Note

1. Introduction

1.1 The Council has a variety of duties to undertake in relation to permits, consents and licences set out within legislation, some of which have been in effect for centuries. This sets down rules by which certain activities can only be lawfully carried out if a formal permission has been issued. This process is necessary to ensure that appropriate checks are made and any necessary conditions imposed on the activity in order to preserve the amenity of an area, minimise inconvenience to the public and ensure fairness and equality of opportunity. There may also be a need to enquire into the background of an applicant, assess their suitability for the matter under consideration and, in some cases, their honesty. This is because the public must have confidence in the robustness of such processes and be sure that the Council's corporate responsibility is being satisfactorily discharged.

1.2 Every member of the public will at some time encounter a service or business which has been required to obtain an appropriate permission for its activities. Licensing decisions will therefore impact frequently upon the daily lives of private individuals. It is therefore essential that licensing decisions be taken openly and impartially. The licensing process must leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.

1.3 On the passing of the Licensing Act in 2003, it was decided by Parliament that decisions in relation to alcohol, entertainment and late night refreshment licensing would best be left to elected members who would be accountable to the local electorate. An elected member is required to take forward concerns, drive change, participate in community and action groups and made decisions for the community as a whole. As the Standards Board for England noted in 2004, these roles and responsibilities can often conflict and there needs to be a balance between representation and ensuring that the authority can even-handedly decide matters on their merits. Not only that but it must be seen doing so by maintaining public confidence in the fairness and impartiality of the licensing decision-making process.

1.4 The purpose of this Local Code is to provide clarity in the way in which members and employees of the Council (or 'officers') will deal with licensing matters and to set the standard of conduct that other parties to the process are entitled to expect of the Council. Whilst this Local Code deals primarily with the determination of licensing applications under the Licensing Act 2003, the principles it endorses must be taken into account when considering how other licensing and registration activities are to be dealt with, how local policies are considered and followed, how applicants are dealt with during the process and what involvement members can have with such matters prior to their determination.

1.5 In this Local Code, 'member' includes all elected members of the Council.

1.6 This Local Code is intended to ensure that the licensing process is characterised by open and transparent decision making. Adherence to the Local Code will help to protect the Council against allegations of maladministration, legal challenges to its decisions and applications for costs based on the grounds of such decisions being unlawful. The Local Code is based on three main principles:

(a) Decision-makers must **not** favour unfairly (or appear to favour unfairly) any individual or group.

(b) Decision-makers must **not** make decisions in advance of being presented with all the relevant facts.

(c) Members and employees have different but complementary roles in consequence of which a successful relationship must be based upon mutual trust and respect for the positions of each other.

2. Relationship with the Council's Codes of Conduct

2.1 This Local Code is concerned with the integrity of the licensing process and maintaining public confidence in the licensing system. Whilst there is a degree of overlap with the Council's Codes of Conduct for Members and Employees, this Local Code of Good Practice also imposes additional obligations in the specific context of licensing and control.

2.2 Failure to follow this Local Code may be taken into account in investigations into possible maladministration and may result in allegations that a member or employee has breached the Council's Codes of Conduct (and a member being referred to the Monitoring Officer for investigation or an employee being subject to disciplinary action).

3. Application of This Local Code

3.1 This Local Code applies to both members and employees who become involved in licensing issues. It applies to all licensing decisions (whether taken at Council, Committee, Sub-Committee or by employees under delegated powers).

3.2 The Local Code also applies to site visits, meetings, forums and all other formal and informal contacts between members, employees, applicants, agents, objectors, legal advisors and other members of the public involved in the licensing process. Whilst this Local Code primarily addresses the determination of licensing applications its underlying principles must also be applied to the processes up to that stage and subsequent enforcement issues.

3.3 When determining whether there has been a breach of this Local Code the standard to be applied will be that of the reasonable member of the public with knowledge of the relevant facts and the standard of proof will be that of the balance of probabilities.

4. The Roles and Conduct of Members and Employees

4.1 Members and employees have different but complementary roles. These are explored in detail in the Council's Local Protocol on Member and Officer Relations contained in Part 5 of the Council's Constitution. The guidance contained in that Protocol is relevant to the licensing process.

4.2 Both members and employees are subject to formal Codes of Conduct adopted by Torbay Council and set out in the Constitution. These cover issues central to the preservation of an ethical approach to Council business. In particular, members must register and declare pecuniary and non-pecuniary interests and employees must register and declare personal interests in accordance with the Employee Code of Conduct. However, the Codes also govern relationships between members, employees and the public and these provisions will impact on the way in which

members and employees participate in the licensing process. Of particular relevance to members and employees involved in licensing decisions is the requirement that they;

'must not in his/her official capacity, or any other circumstances, use his/her position as a member/employee improperly to confer on or secure for him/herself or any other person, an advantage or disadvantage'

4.3 The licensing system involves the consideration of proposals which often impact greatly upon wider public interest. Much is often at stake in this process and opposing views are frequently very strongly held by those involved. Whilst members and employees need to listen to these views, if they are involved in the **determination** of a licensing matter, they must **not** unfairly favour (or appear to unfairly favour) any person, body or organisation, or any group or locality, nor put themselves in a position where they **appear** to do so. **Members or employees who do not feel that they can act in this way must ensure that they do not take part in the determination of a licensing matter**.

4.5 It is wholly unacceptable for any member or employee ever to receive (or seek) any gift or hospitality as part of the licensing process. It exposes the recipient to the most serious allegations of impropriety and may result in criminal charges for corruption (punishable on conviction by a long prison term and/or heavy fine and/or referral to the Monitoring Officer).

4.6 The functions of employees are:

(a) To carry out the administrative tasks associated with licensing applications and enquiries, to negotiate, where appropriate (and in accordance with this Local Code), with consultees, applicants, respondents, those who have made representations and their agents.

(b) To prepare a comprehensive and balanced report indicating the background and relevant issues arising from the application. Where Licensing Act 2003 applications are concerned, details will, in particular, include matters relating to the promotion of the licensing objectives but, in order to retain the required position of neutrality, no recommendation will be made. In respect of other licensing matters, the report may include a clear recommendation which will be determined by a Licensing Committee or (Sub-Committee).

(c) To determine licensing matters as authorised by the Council's Scheme of Delegation and in accordance with licensing law and policies and fulfil any duties, other than determinations, provided for within that Scheme.

(d) To advise and assist members and the general public in respect of any queries falling within the function of the Licensing Section.

4.7 In carrying out these responsibilities, employees will:-

(a) Provide impartial guidance to all parties including applicants, respondents, objectors, consultees and members and provide professional advice to the Council.

(b) Ensure, so far as possible, that all information necessary to make a decision

has been obtained, evaluated and properly taken into account (when making a decision or formulating a recommendation) and (if applicable) properly reported to the decision making person or body.

5. Registration and Declaration of Interests

5.1 The Council's Codes of Conduct for Members and Employees (set out in Part 5 of the Constitution) require certain interests to be registered and declared. These requirements **must** be followed scrupulously, by Members and Employees when dealing with Licensing matters.

5.2 Where a member has a pecuniary interest or an employee has a personal interest in a licensing matter, he/she may attend a meeting, but only for the purpose of making representations, provided that the public are also allowed to attend the meeting for the same purpose. In the case of a member, having made his/her representations he/she must withdraw from the meeting room and can not vote on the matter.

5.3 Where an application is made under the Licensing Act 2003 in respect of which a member or an officer can be considered to live "in the vicinity" of the premises, the member or officer will be entitled to raise, on a personal basis, a representation.. Representations will then be dealt with in accordance with the Licensing Hearing Regulations.

5.4 If a member is a member of an outside body that is making (or supporting or objecting to) a licensing application it is very likely that the member will have a declarable non-pecuniary interest and quite likely that the member will have a pecuniary interest that will preclude he/she from taking part in the matter or even being in the room when the Committee (or Sub-Committee) consider the matter. In these circumstances it is strongly recommended that members seek advice from the Monitoring Officer.

5.5 It will **not** normally be appropriate for a member who is a Council representative on an outside body to decide on a licensing matter affecting that body if they are a director or trustee of the outside body. This is because those roles involve some obligation to act in the best interests of the outside body and may create an inherent conflict with the member's role as a councillor. In the case of bodies such as trusts, the obligation to act in the best interests of the trust is a legal one and overrides duties as a Councillor. If in doubt, the advice of the Monitoring Officer should be sought on this issue.

5.6 Where a member who is a Council representative on an outside body (in whatever capacity, not just as a director or trustee) has taken a firm view on a licensing matter, either in meetings of the outside body or otherwise, they may be open to an accusation of predetermination and must **not** vote on the matter at any Council meeting. This is discussed more fully in part 6 below. Failure to follow this advice may result in a licensing decision being challenged in the courts.

6. Licensing Applications by Members and Employees

6.1 Any councillor or employee involved in the licensing process who makes an application (or who has any other councillor pecuniary interest or employee personal

interest in an application) shall:

(a) Promptly inform the Divisional Director for Community and Customer Services who shall ensure that a written record of such interest is placed on the application file.

(b) Take no part in the processing or determination of the application.

(c) If in any doubt as to the nature of any interest, take advice from the Monitoring Officer in relation to the matter.

(This does not preclude members or employees from exercising their right to make written representations as a private individual following the requirements set out in paragraph 5 and 6 of this Local Code.)

6.2 The Divisional Director for Community and Customer Services will ensure that all applications in which an officer involved in the licensing process has a personal interest are determined by a Committee (or Sub-Committee) and not under powers delegated to officers.

6.3 Applications by officers or by their friends or relatives (as defined in the Employee Code of Conduct) will not be determined under powers delegated to officers. The Divisional Director for Community and Customer Services may decide that this procedure will apply to any other employee of the Council on a case by case basis. The paramount consideration in exercising this discretion will be to maximise public confidence in the impartiality of the licensing process.

6.4 Where a member has a pecuniary interest or employee has a personal interest in a licensing matter, the Council's Codes of Conduct also require that they must not seek ***improperly*** to influence a decision about a matter.

6.5 It is important to emphasise that *improperly* does not imply that a member or employee is to be precluded from seeking to explain and justify their proposal to a Licensing Officer (whether over the phone, face to face or in writing) in advance of consideration of the matter by Committee (or Sub-Committee).

6.6 References to the right to appear and speak at hearings and meetings, or to nominate others as representatives, will be relevant only where the legal procedures allow such attendance and participation.

7. Lobbying Of and By Members

7.1 If members are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on licensing matters. **Lobbying is a normal and perfectly proper part of the political process.** Local concerns about licensing developments and proposals need to be adequately aired as part of the licensing process. **However, a member must not lobby or act as advocate for (or against) a licensing proposal and vote on the determination of the matter.** Members must comply with the guidance in relation to pre-determination as set out in part 4 of this Local Code.

7.2 Members may organise support for or against a licensing application or lobby other members. However, whilst they may be able, following the submission of a relevant

representation, speak at the Committee (or Sub-Committee) meeting when the application is determined they must not preside at the Committee that determines the matter.

7.3 When being lobbied, members in general, but members of the Licensing Committee in particular, must take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all relevant matters at Committee (or Sub-Committee). In such circumstances it is preferable for a member to restrict their comments to procedural advice and to encourage the lobbyist to make a representation to the Licensing Authority in order that their opinions can be considered as part of the decision-making process, if they can be considered to be relevant under the legislation.

7.4 Where the Monitoring Officer (or his/her representative at Committee) reasonably believes that a member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee (or Sub-Committee), he/she will advise the member that it would be inappropriate for the member to vote on the application.

7.5 If a member is approached in their role as ward councillor by a third party, neighbour, potential objector or supporter and they will preside over that application then the Member must direct such persons to officers of the Licensing Authority and not express opinions which may be taken as indicating that they have already made up their minds on an issue before they have heard all the evidence and arguments at Committee (or Sub-Committee). Where a Member believes it is more suitable to represent their constituents, the Member must withdraw from determining the matter.

7.6 Members are encouraged where practicable (and particularly if the application is obviously highly contentious) to keep a dated written record of lobbying and the response given. Appendix 1 contains a form designed for this purpose. In accordance with this Local Code it will be considered to be good practice for members to hand in any completed form prior to the relevant Committee (or Sub-Committee) meeting. All completed records must be submitted to the Head of Governance.

8. Employees' Discussions and Negotiations with Applicants

8.1 It is recognised that employees undertake differing, but complementary, tasks which may overlap. Legislation, and in particular the Licensing Act 2003, requires that a distinction be drawn between the duties of the Council as Local Authority and, separately, as a Licensing Authority. Consequently, those involved with the administration of applications will be required to adopt a position of neutrality where this is required. Other employees may be acting as statutory consultees in these matters and providing representations to be considered when the matter is determined. The way in which discussions and negotiations are conducted will be affected by the type of application and matter under consideration. Pre-application meetings and informal discussions between employees, potential applicants and responsible authorities are an unavoidable and integral part of the licensing process.

8.2 In any discussions on licensing issues, the position of the employee concerned will always be made clear at the outset. This will be either that:-

the discussion and any views expressed are based on the employee's professional judgement but will not bind the Council to any particular decision. This is because, by the nature of such meetings, not all the relevant information will be to hand and consultations with interested parties will not normally have taken place;

or

the intention of the discussion will be to assist the formulation of an application which addresses the appropriate licensing objectives, so reducing the likelihood of a representation being provided and, consequently, consideration of the matter at a hearing.

8.3 Advice given will be consistent and based on the legislation, relevant guidance, local licensing policies and any other material licensing considerations. Every effort will be made to ensure consistent interpretation of licensing policies by different employees. It will be made clear, however, when the employee is providing a personal view or interpretation rather than qualified legal advice which should be confirmed by the enquirer from an independent source.

9. The Decision-Making Process - General

9.1 In determining applications pursuant to the Licensing Act 2003 and the Gambling Act 2005, the Licensing Committee or Sub-Committee will follow the procedure laid down in the Hearing Regulations – Licensing Act 2003 (Hearings) Regulations 2005.

9.2 When determining licensing matters members and employees must approach each application with an open mind and carefully weigh up material licensing considerations, particularly with reference to the local Statement of Licensing Policy and statutory guidance. They must disregard all considerations that cannot lawfully be taken into account.

9.3 No group of members (for example, from the same political group, or from the same ward) and no informal meeting of a particular group on a Committee (or Sub-Committee) will be used to decide how members shall vote in a Committee (or Sub-Committee) determining an application. **It is unlawful for a licensing decision to be subjected to the discipline of the political whip and to do so would also constitute maladministration.**

9.4 Members with a pecuniary or non-pecuniary interest and employees with a personal interest in an application must declare the interest in accordance with the Council's Codes of Conduct for Members and Employees and this Local Code.

9.5 Members and officers will address one another during the debate in a proper manner and through the Chair. Members shall respect the impartiality and integrity of officers.

9.6 Senior Legal and Licensing Officers shall always attend meetings of the Licensing Committee (or Sub-Committee) to ensure that procedures have been properly followed and licensing issues properly addressed.

9.7 In discussing and determining a licensing application, members will confine themselves to the licensing merits of the case and the reasons for making a final decision shall be clear and reasoned based.

9.8 On occasions the Licensing Committee (or Sub-Committee) will disagree with the officer's recommendation, where one has been made. Licensing Committees (or Sub-Committees) are entitled to reach their own decisions by attaching different weight to the various licensing criteria which are relevant to the application. However, the same strict legal requirements have to be met, as the reasoning in the officer's report will no longer apply.

9.9 Where a member proposes to recommend approval contrary to an officer's recommendation of refusal, the Chair will give the Licensing Officer an opportunity to respond to that recommendation and to discuss any appropriate conditions. The officer may request further time in order that appropriate consideration can be given to the proposed recommendations.

9.10 Before any matter is put to the vote any member of the Committee (or Sub-Committee) may request the Chair to ask the clerk to read to the meeting the full text of the proposal to be voted upon.

10. Decision Making – Delegation to Employees

10.1 The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Licensing Committee (or Sub-Committee).

11. Public Speaking At Licensing Committees (Or Sub-Committees)

11.1 Members of the public are entitled to speak at meetings of the Licensing Committee, apart from when the Licensing Committee (or Sub-Committee) are considering matters pursuant to the Licensing Act 2003. For applications under the Licensing Act 2003 'relevant persons' can make written representations, these representations must be valid and submitted to the Licensing Authority within the prescribed consultation period (for further detail refer to the Licensing Act 2003 (Hearings) Regulations 2005).

11.2 For a representation to be relevant it must:

- relate to the effect of the grant of the licence on the promotion of the licensing objectives and be submitted within the prescribed consultation period;
- be made by a relevant person, within the prescribed consultation period;
- not have been withdrawn
- not be 'frivolous or vexatious' or, in the case of a review, 'repetitious' if made by an interested party; or
- if it concerns the premises supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection.

11.3 On receipt of relevant written representations, a hearing is required and notices are sent to the applicant, as well as those making representations, requiring them to return a second notice, within five days advising the Licensing Authority whether or not they will be attending the hearing which will determine the application.

11.4 If a notice is not received from interested parties, relevant authorities or the applicant it is at the discretion of the Committee/Sub-Committee to allow that person to speak at the hearing.

12. Committee Site Visits

12.1 Where the Licensing Authority determines that a site visit is deemed necessary, the Licensing Authority will make the relevant arrangements.

13. Review of Decisions

13.1 The Licensing Committee will regularly review, at least annually, details of decisions made under the Licensing Act 2003, including those made under Delegated Powers, to maintain an overview of the general situation, the purpose is to improve the quality of decisions.

14. Training in the Licensing Process for Members

14.1 All members of the Council on being elected must undertake initial licensing training. Members of the Council may be given refresher training when changes are made to licensing law or procedure.

14.2 Members who have not undertaken the relevant licensing training shall not be permitted to be a member of or substitute for other members on the Licensing Committee (or Sub-Committee).

14.3 Any failure to comply with the core licensing training requirements may be referred to the Monitoring Officer in accordance with the Code of Conduct for Members and to the appropriate Group Leader.

Appendix 1

Licensing Attendance Note

Licensing application type:
Premises and address :
Enquiry from:
Nature of Representations:
Response Given:
Member:
Date:

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Local Protocol – Working Parties

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1. Introduction

1.1 There is no legal definition of a working party. Generally, however, a working party consists of a small group of Members (but with officers in attendance at meetings to provide support and advice) with the remit to consider policies and specific matters. They have a particular role in relation to projects which need to be completed within a specified time period.

1.2 A working party conducts its business on a less formal basis than that of a committee. It does not have any decision-making powers and can only make recommendations to the body from which it was formed, or to such other body as the parent body decides, or to an officer.

1.3 The term "working parties" refers to all informal bodies appointed by the Council, its committees (including the Overview and Scrutiny Board), the Cabinet and Cabinet committees.

1.4 The purpose of this Protocol is to give guidance in relation to the operation of working parties. .

2. Appointment of Working Parties

2.1 The Council, its committees, the Leader of the Council, other individual members of the Cabinet (where they have been give delegated authority to do so), the Cabinet, Cabinet Committees and the Chief Executive may establish a working party or amend the terms of reference or membership of existing working parties. In establishing working parties, the appointing body or person will determine the precise terms of reference of the working party (having regard to the terms of reference of any other working parties), initial membership and (if appropriate) duration of the working party.

2.2 In exercising the powers under paragraph 2.1 above the appointing body or individual shall seek to ensure that Member and officer time and the financial resources of the Council are used in such way as he/she/it considers to be supporting the delivery of the Council's priorities and in the best interest of the Council and local people.

2.3 Working parties considering non-executive functions will be appointed in accordance with the principles of political balance.

3. Agendas, Reports and Minutes and Methods of Working

3.1 Sometimes working parties will act in the manner of "consultative panels" receiving reports from officers on potentially sensitive or controversial matters on which they will be expected to provide guidance to the decision maker. On other occasions working parties will be tasked with investigating complex policy issues and will be expected to formulate recommendations for the Council, the Cabinet (including the Leader of the Council, individual members of the Cabinet and committees of the Cabinet), officers with delegated authority or the Overview and Scrutiny Board.

3.2 The working party will be expected to conduct its business in accordance with its terms of reference.

3.3 An agenda for a working party meeting will normally be sent out prior to a meeting of the working party setting out its business. The Governance Support Team will assist in the preparation and despatch of agendas where required.

3.4 Where a working party is undertaking consultative work or policy development, the relevant Director or Divisional Director (or his/her nominated representative) will provide the principal support to the working party (in the form of advice on the subject concerned) and will be responsible for arranging for notes of working party meetings to be produced and circulated to members of the working party. He/she will also be responsible for drafting reports on behalf of the working party.

3.5 It is at the discretion of each working party whether it shall invite external representatives e.g. stakeholders or business representatives and members of public to assist with its work. The role of such representatives would be to act as advisors to the working party using their particular expertise/experience. External representatives attending consultative working parties do so in a voluntary capacity and will not receive any remuneration.

4. Access to Meetings by the Press and Public

4.1 It is at the discretion of the Chair of each working party whether the press and public shall be permitted to attend any meetings. Details of meetings where the press and public can attend will be set out on the Council's published notice of meetings. A working party may resolve to exclude the press and public if they consider it to be in the best interests of the Council or local people.

5. Access to Information by the Press and Public

5.1 Agendas for those working party meetings that are open to the press and public will be sent to the press prior to the meeting. Supporting documentation supplied to the working party may be provided to the press and public where appropriate. Documentation that, in the opinion of the lead officer, contains exempt and/or confidential information will not be available to the press and public.

6. Access to Information by Non Working Party Members

6.1 All non-working party members including the Leader of the Council will be entitled to receive documentation submitted to working parties in accordance with Standing Order E21 in relation to Access to Information and the need to know principles.

7. Interests of Members and Officers

7.1 All elected Members, co-opted members and officers when attending meetings of working parties shall declare any interests and shall not take part in any discussions where the nature of the interest means that to take part would be in breach of the respective Codes of Conduct for Members and Employees.

8. Procedures at Meetings of Working Parties

8.1 Election of Chair

Working parties shall elect a Chair at their first meeting. In the case of the Chair being absent a Chair shall be elected for that meeting. The Chair will normally be an

elected Member. However, it may be appropriate to elect an external representative as a working party's Chair depending on the type of its work. Members of the Cabinet shall not normally chair meetings of working parties unless a majority of members of the working party are also members of the Cabinet.

8.2 **Participation of the Press and Public**

Members of the public and the press may wish to make a contribution at a meeting of a working party. The Chair has the discretion to determine whether he/she allows a member of the public or the press to speak at a meeting of a working party. If a member of the public or the press wishes to speak they shall advise the Chair prior to the meeting or indicate their wish to speak by raising their hand during the meeting.

8.3 **Formulation of Recommendations**

A recommendation arising from the deliberations of a working party will normally be reached by a consensus. It may, however, be appropriate to determine a way forward by taking a vote on a proposal. In such circumstances, the recommendations before the working party shall be determined by a simple majority of those Members present in the room at the time proposal was put. The Chair will have a second or casting vote.

9. Application of Standing Orders

9.1 The following Standing Orders shall be used as guidance only in relation to the operation of working parties:

a) Standing Order A4 – Time and place of meetings

b) Standing Order A11 – Duration of meeting

c) Standing Order A20 – Record of attendance

d) Standing Order A26 – Disturbance by members of the public

e) Standing Order A27 – Use of Cameras and tape and video recorders

f) Standing Order B2 – Appointment of substitute Members

g) Standing Order B3 – Quorum

h) Standing Order B4 – Attendance at Committee Meetings

i) Standing Order E10 – Exclusion of access by the public to meetings

j) Standing Order E11 – Exclusion of access by the public to reports

References to the "Council" or the "Committee" shall be read as the "Working Party" and references to the "Civic Mayor" or "Deputy Civic Mayor" being read as the "Chair" or "Vice-chair".

Local Protocol – Gifts and Hospitality

Contents

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   - Special Consent Provisions
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5. Gifts to the Authority
6. Definition of Gifts and Hospitality
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Appendix 1 Registration of Gifts and Hospitality

1. Introduction

1.1 In this Protocol, "member" includes all elected members of the Council and all non-elected Members of any Committee (or any Sub-Committee) irrespective of whether or not they have any voting rights.

1.2 The acceptance of gifts and hospitality reflects directly upon the public perception of members and the Authority. Therefore, it is imperative that Members only act in the public interest and not for personal advantage. This also applies to any relative or friend that receives any gift or hospitality due to a Member's position as an elected Member.

1.3 This protocol does not apply to gifts and hospitality that are not related to a Member's role, such as Christmas presents from friends and family. However, a Member shall always consider whether any gifts and hospitality could be seen as being inappropriately connected with their position.

1.4 Acceptance of a gift or hospitality in breach of any of the Council's Codes and Protocols, or failure to declare receipt of such a gift or hospitality, may result in criminal proceedings.

1.5 This Local Protocol sets out:

(a) the principles which Members shall apply whenever they have to decide whether it would be proper to accept any gift or hospitality;

(b) a procedure for obtaining consent to accept a gift or hospitality when a Member considers it would be proper to accept it; and

(c) a procedure for declaring any gift or hospitality received by a Member and for accounting for any gift to the Authority.

1.6 This Local Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to Members by Torbay Council.

1.7 This Local Protocol also applies in respect of gifts offered to the Civic Mayor or Deputy Civic Mayor in the course of their civic duties.

2. General Principles

2.1 In deciding whether it is proper to accept any gift or hospitality, the following principles shall be applied. Even if the gift or hospitality comes within one of the general consents set out later in this Protocol, it shall not be accepted if to do so would be in breach of one or more of these principles.

2.2 Gifts or hospitality shall never be accepted as an inducement or reward for anything done as a Member.

2.2.1 Members must act in the public interest and must not be swayed in the discharge of their duties by the offer, prospect of an offer or the non-offer of any inducement or reward for discharging those duties in a particular manner.

2.2.2 The Code of Conduct for Members provides that Members must act solely in the public interest. This includes serving the Authority and the whole community, rather

than acting in the interests of any particular individual or section of the community. It is a breach of the Code of Conduct to improperly confer any advantage or disadvantage on any person or act to gain financial or other material benefits for the Member, a member of the Members' family, a close associate or relevant person.

2.3 Gifts or hospitality shall only be accepted if there is a commensurate benefit to the Authority.

2.3.1 The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit to the Authority which would not have been available but for the acceptance of that gift or hospitality (for example, the opportunity to progress the business of the Authority expeditiously through a working lunch). The acceptance of a gift is much less likely to produce such an advantage.

2.3.2 Unless the benefit to the Authority is clear and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for the Member's personal benefit.

2.4 Gifts or hospitality shall not be accepted if acceptance might be open to misinterpretation.

2.4.1 The appearance of impropriety can be as damaging to the Authority and individual members as actual impropriety. The Authority's ability to govern rests upon its reputation for acting fairly and in the public interest.

2.4.2 Members shall consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that they or the Authority favours any particular person, company or section of the community. Similarly consideration shall be given to whether acceptance of the gift or hospitality could be seen to place the Member or the Authority under any improper obligation to any person or organisation.

2.4.3 This principle shall be particularly considered on occasions when the Authority is:

(a) undertaking a competitive procurement/tendering process in line with the Council's Contracts Procedures; or

(b) acting in a regulatory role, such as determining planning or licensing applications or setting planning policy; or

(c) determining a grant application by any person or organisation; or

(d) awarding leases; or

(e) disposing of council assets; or

(f) granting concessions for use of council land.

2.4.4 Members shall always be aware of the possibility that the person or company offering gifts or hospitality may have dealings elsewhere in the Council of which the Member is unaware.

2.5 Gifts or hospitality shall never be accepted if it puts the Member under an improper obligation.

2.5.1 All Members shall recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of gaining influence.

2.5.2 Equally, if others note that a Member has been prepared to accept a gift or hospitality, they may feel that they will no longer be able to secure impartial consideration from the Authority.

2.6 Gifts or hospitality shall never be solicited

2.6.1 Members shall never solicit or invite an offer of a gift or hospitality in connection with their position as a Member unless the acceptance of that gift or hospitality would be permitted under this Protocol. Care shall be taken to ensure that Members avoid giving any indication that they might be open to such an improper offer.

3. Consent Regimes

3.1 There may be occasions where it may not be appropriate for a Member refuse a gift or hospitality in the course of their duties as it would appear unusual, or impolite, or be likely to cause offence. In such situations the following provisions shall apply.

3.2 General Consent Provisions

3.2.1 Subject to the General Principles set out in this Local Protocol, Members may accept gifts and hospitality in the following circumstances:

(a) civic hospitality provided by another public authority;

(b) reasonable refreshment in connection with any meeting or visit in the ordinary course of a councillor's duties, such as tea, coffee, soft drinks and biscuits;

(c) tickets for sporting, cultural and entertainment events which are sponsored by the Authority;

(d) small gifts of low intrinsic value below £50 branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars or diaries;

(e) modest working lunch provided to allow parties to discuss business;

(f) modest souvenir gifts with a value below £50 from another public authority given on the occasion of a visit by or to the authority;

(g) reasonable hospitality received at external visits or conferences provided that this is in line with that available to all delegates;

(h) attendance at events organised by or on behalf of registered charities;

(i) goods or services on special terms where those terms whilst not necessarily available to the general public are available to all the Authority's employees (including where publicised by way of 'all staff' emails).

3.2.2 Other unsolicited gifts may be accepted where it is impracticable to return them to the person or organisation making the gift. However, as soon as practicable after the receipt of the gift, it shall be passed (together with a written statement identifying the information set out in paragraph 3.3 below) to the officer responsible for administering the Council's civic and ceremonial functions who will allocate the gift to an appropriate local registered charity. The officer will write to the person or organisation making the gift thanking them on the Member's behalf for the gift and informing them where the gift will be donated.

3.2.3 Where branded gifts are accepted in accordance with the guidance in this Protocol, care shall be taken so as to not display the item when this might be taken as an indication of favour to a particular person, supplier or contractor.

3.3 Special Consent Provisions

3.3.1 Members who wish to accept any gift or hospitality in accordance with the General Principles set out in paragraph 2 but which is not within any of the General Consents set out in paragraph 3.2 must apply for specific consent to the Monitoring Officer, in writing setting out the following:

(a) the nature and estimate of the market value of the gift or hospitality;

(b) who the offer or invitation has been made by or on behalf of;

(c) the connection which the Member has with the person or organisation making the offer or invitation;

(d) any work, permission, concession or facility which the Member is aware that the person or organisation making the offer or invitation may seek from the Authority; and

(e) any special circumstances which leads the Member to believe that acceptance of the gift or hospitality will not be improper.

3.3.2 Gifts or hospitality must not be accepted until consent (in writing or by email) has been received from the Monitoring Officer.

3.3.3 The Monitoring Officer will publish the details of any approval on the Council's website. This does not remove the obligation on the Member to register the receipt of gifts or hospitality in accordance with paragraph 4 below.

4. Registering the Receipt of Gifts or Hospitality

4.1 Any Member who accepts any gift or hospitality with an estimated market value of £50 or greater must, as soon as possible and within 28 days after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information in paragraph 3.3.1 above. This applies regardless of whether the gift or hospitality falls within the General Consent Provisions or if the Monitoring Officer has authorised the acceptance of the gift or hospitality under the Special Consent Provision. (Note: £250 is the total value of gifts that a Councillor receives in a tax year in accordance with the exemption for small gifts set out under S324 ITEPA 2003. Where a gift does not satisfy the exemption conditions, the value should be subject to tax and National Insurance contributions.)

4.2 A form for this purpose is attached to this Protocol (and is available electronically upon request from the Governance Support Team although the information can be submitted by any other convenient (written) means.

4.3 The Monitoring Officer will publish any such declarations on the Council's Website.

4.4 Members may voluntarily register the receipt of gifts and hospitality under £50 in value (or the offer of a gift or hospitality of any value which has been declined) if they are concerned that its acceptance (or offer) might be misinterpreted, particularly if it comes from a contractor or tenderer.

5. Gifts to the Authority

5.1 Gifts to the Authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the Authority.

5.2 Members shall not solicit any such gift on behalf of the Authority except where the Authority has formally identified the opportunity for participation by an external party and how that participation is to be secured.

5.3 If a Member receives such an offer on behalf of the Authority, they must refer details of the offer to the Chief Executive or relevant Director who will consider whether it is appropriate for the Authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the Authority under any improper obligation, whether there is a real benefit to the Authority which would outweigh any dis-benefits). The Chief Executive or relevant Director will then write to the person or organisation making the offer to record the acceptance or non-acceptance of the offer, record the gift for audit purposes and to ensure that the gift is properly applied for the benefit of the Authority.

5.4 The offer shall also be reported directly to the Monitoring Officer.

5.5 If Members have any concerns about the motive of the person or organisation making the offer or whether it would be proper for Authority to accept the gift, they shall consult the Monitoring Officer directly.

6. Definition of Gifts and Hospitality

6.1 Gifts or hospitality includes any:

(a) free gift of any goods or services;

(b) money (or loan), gift vouchers, lottery tickets, scratch cards, raffle tickets or anything else offering the chance of winning a prize;

(c) opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public;

(d) opportunity to obtain any goods or services which are not available to the general public;

(e) offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

6.2 References to the “value” or “cost” of any gift and hospitality are references to the higher of:

(a) your estimate of the cost to the person or organisation of providing the gift or consideration; or

(b) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

7. Breaches of This Local Protocol

7.1 If a Member becomes aware of any conduct by another Member that he/she reasonably believes involves a failure to comply with this Local Protocol, he/she shall make a written allegation to that effect to the Council’s Monitoring Officer as soon as it is practicable for him/her to do so. The Monitoring Officer shall then consider the allegation in accordance with the Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of conduct.

TORBAY COUNCIL

Appendix 1

Registration of Gifts and Hospitality Accepted or Declined

In accordance with the Council's Protocol on Gifts and Hospitality, I am writing to record that I have received the following gift or hospitality over the value of £50. (This form may also be used to register the offer of any gift or hospitality that has been declined in line with paragraph 4.4 of the Council's Local Protocol on Gifts and Hospitality.)

Name of individual or organisation arranging the gift or hospitality

Relationship with the individual/organisation

Details of any permission, concession or facility that the individual/organisation may seek from the Council

Date of acceptance (or offer) of the gift or hospitality.
(Please indicate whether the gift or hospitality was accepted or declined.)

Type of General Consent Provision
(Please refer to paragraph 3.2 of the Gifts and Hospitality Protocol.)

Date Consent Obtained from Monitoring Officer for Special Consent Provision
(Please refer to paragraph 3.3 of the Gifts and Hospitality Protocol.)

Any special circumstances justifying the acceptance of the gifts or hospitality

Name .....

Signed .....

Date .....

Signed .....
Monitoring Officer

Date .....

Local Protocol – Members' IT

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1. Introduction

1.1 Torbay Council recognises that Members' access to email and internet facilities and access to internal Torbay Council Information Systems from their own home is an essential tool in effectively performing their role and executing their duties as elected representatives.

1.2 Torbay Council will offer to provide all Members with appropriate Information Technology (IT) equipment, software, support and other associated equipment to facilitate the performance of their duties as elected representatives.

1.3 The Council will provide the necessary training and support that individual Members may require to enable them to use the equipment and services provided. The minimum training requirement for a Member is to complete the IT Induction, Data Protection and Information Security training.

1.4 All equipment provided by the Council is subject to this Protocol. Members are required to sign a copy of the IT Agreement before receiving the equipment.

2. Equipment and Registration of Equipment

2.1 Each Member will be provided with appropriate IT equipment.

2.2 Any accessories such as keyboard, case, must be supplied by the Council's IT department.

2.3 Where an iPad is provided, in order for it to be activated, the Member will be required to set up an Apple account which is different to any other Apple accounts they have. This will avoid app's etc. being downloaded onto the Council managed iPad which are from other personal devices etc.

2.4 Members will be required to use their IT equipment to download agendas and reports for meetings.

2.5 As Members will be able to access their emails on their devices, iPhones will not be automatically provided to Members.

2.6 No other IT equipment will be issued to Members, unless it's required as a reasonable adjustment to meet needs such as a disability.

3. Training and Technical Support

3.1 All Members will be required to attend IT training during their induction with ongoing training being available upon request. Support from Governance Support will be available for smaller less technical questions, support from IT Servicedesk will also be available during normal working hours. If a Member requires technical support from IT, they can either call a dedicated helpline (20)7711) or email the Servicedesk (servicedesk@torbay.gov.uk). Depending on the complexity of the query IT will

arrange an appointment with the Member within three working days of them contacting the Servicedesk.

3.2 During their term of office, IT Services will assist Members with any software updates, where required. Members are expected to ensure that their devices are updated regularly as required.

3.3 IT Services will configure the IT equipment with apps and links to Council systems, such as Mod.gov, Numbers, Keynote, Pages, Docs at Work, Intranet, File Access, Facebook, Twitter, Teams etc. IT Services will also assist Members in setting up any personal email accounts onto their IT equipment e.g. Gmail, Yahoo, Hotmail etc.

4. Security of Council Provided IT Equipment

4.1 The Member accepts responsibility for the safe-keeping of the IT equipment and any other associated equipment.

4.2 The equipment will be covered by the Council's Insurance Policy for the whole of the Members' term of office. "Good Practice" guidelines should be followed. These can be found in the IT Security document which is provided to Members when they collect their IT equipment. Members must take reasonable precautions to keep the IT equipment and any other related equipment secure from theft or criminal damage. A variable excess may be payable in respect of an insurance claim where there has been a failure to take reasonable security precautions, and the Council may look to the Member responsible to meet or contribute to such a cost arising from any failure to comply with this paragraph. Claims are likely to be declined by the insurer if there has been a blatant breach of security whilst equipment is in transit (e.g. equipment kept in full view or left in an unlocked or unattended vehicle).

4.3 Access to Torbay Council's Information Systems is subject to password security. The Member shall ensure that no other person is given access to Torbay Council Information Systems and shall not reveal any such password to any other person.

4.4 Failure to act in accordance with this Members IT Protocol when, using Council provided IT equipment, may be considered a breach of the Members Code of Conduct.

4.5 Any loss or breach of personal data/equipment must be reported immediately to infocompliance@torbay.gov.uk in order to comply with Data Protection requirements.

5. Use for Council Business

5.1 The IT equipment and related equipment is provided to the Member specifically to assist them in carrying out their role as an elected representative. The Member must therefore not use the IT equipment and related equipment in any manner which will interfere with its use for that purpose.

5.2 The use of the Council IT equipment is subject to the Council's Policies and guidelines relating to the use of IT equipment prevailing at the time.

5.3 Accordingly, the Member must not:

(a) deliberately misuse the IT equipment in such a manner as to cause it to cease to function; or

(b) install or add any equipment or software without the written prior consent of the Head of IT.

5.4 The Member must:

(a) report any faults promptly to the IT Service Desk; and

(b) provide access to Council officers to service, maintain and repair the IT equipment and any other related equipment.

5.5 The Council provides the IT equipment and any related equipment and materials required to enable a Member to undertake their role efficiently and effectively. Accordingly, the Council may decline to provide further equipment or material beyond what is reasonable for Council-related use.

5.6 Members should be aware that the personal use of any equipment provided may attract a tax liability.

6. Use of Council Provided Equipment for Personal Purposes

6.1 The Member is permitted to use the IT equipment for reasonable personal purposes in line with the existing Council's Computer Security Policy which can be found on the Council's Intranet. The Member may also permit reasonable personal use of the computer by members of his/her immediate family (spouse/partner and children (including step children and adopted children)). Should this Protocol be breached as a result of such use, the Member may be in breach of the Members Code of Conduct. Where personal emails are sent using the Council's email address, the email should make it clear to the intended recipient that the message is sent by the user in their personal capacity and not in their capacity as a representative of the Council. All such emails are subject to the Council's email monitoring systems.

6.2 The Member shall not use the IT equipment or permit its use by others for commercial purposes. It should not be used for activities that are unlawful, or which might give rise to a suggestion of impropriety.

6.3 The Council is prohibited from publishing material of a party political nature or using the IT equipment for the preparation of any material of such nature (See further details in Appendix 1). The Member may use the IT equipment to send emails of political nature to members of his/own political group/party. But the IT equipment shall not be used to send any other emails of a political nature and Council provided paper shall not be used for printing of political material.

6.4 The Council has obtained the necessary software licenses for the use of the IT equipment by the Member in an elected capacity. Reasonable personal use of the supplied software by the Member is permitted. Use for business or a political purpose is not permitted.

6.5 The Council accepts no responsibility for any such personal use of the computer or any loss, costs or liability which the Member or any other person may suffer as a result of the use of the IT equipment.

6.6 The IT equipment will be configured to prohibit the installation of software by anyone other than authorised Council staff. The intentional downloading of software from the internet is prohibited.

6.7 The Council has systems in place to make sure that its equipment is secure and that all hardware and software are compatible and protected from cyber-attacks. Members are permitted to download pre-approved work related apps onto an iPad (where provided) but are not permitted to download apps from the Microsoft Store on a laptop Members **must not** download any unapproved apps or software or use unauthorised non-compliant hardware, as this leaves the Council exposed to security risks.

6.8 To protect the data available on an iPad (where provided), Members will not be permitted to utilise the iCloud facility.

6.9 When using the IT equipment particular attention should be paid to the Council's Health and Safety Policies. The Member should be familiar especially with the requirements pertaining to Display Screen Equipment and that these apply equally to desktop computers.

7. Inspection and Audit

7.1 The Council reserves the right to inspect the IT equipment at any time. The Member is required to give Council Officers access at any reasonable time for such inspection and audit, which may be undertaken remotely and without notice to the Member. Members are advised that the IT equipment includes a history file which records its use.

7.2 As this equipment is supplied and owned by Torbay Council, a public body, data held on the device may be subject to access under both the Data Protection Law and the Freedom of Information Act 2000. It may also be subject to audit by third parties for unlicensed or illegal copies of installed software (Copyright, Designs & Patents Act 1988).

7.3 The Council is permitted, and may, monitor the use of IT equipment and services in particular circumstances. These circumstances are governed by prevailing legislation but may include use of IT equipment by Members.

7.4 Any material breach discovered as a result of any monitoring, inspection or audit will normally be reported to the Monitoring Officer who will decide if the Member will be permitted to continue to be provided with these facilities. Breaches of this Protocol may also constitute a breach of the Members' Code of Conduct and, as such, will also be reported to the Monitoring Officer.

7.5 If, as part of any monitoring, inspection or audit, the Council becomes aware of any lawful reason to inform the Police or other enforcement authorities it will do so.

8. Costs

8.1 Members will be provided with 5GB of data per month. If any Member exceeds this, any additional costs incurred by the Council will be their responsibility (current costs

are set out in the IT equipment Agreement) and will be deducted from their monthly allowance.

8.3 The Member will be responsible for any payments which are charged to their Apple/Microsoft account for the purchase of approved apps etc.

8.4 The cost of the installation of broadband at a Member's home will be met by the Member.

8.5 The Council will provide charging facilities at the Town Hall to enable Members to use their device in meetings. Provision of charging equipment will be available at external venues where Council meetings are being held e.g. Riviera International Conference Centre (RICC).

8.6 The Council will meet any reasonable costs incurred by the Member in replacing, repairing or correcting any part of the supplied equipment unless the damage was as a result of deliberate or reckless misuse.

9. Return and Recovery of the IT Equipment

9.1 The IT equipment and all supplied ancillary equipment, including software, is a Council managed device.

9.2 The Council reserves the right to require the Member to return the IT equipment at any time.

9.4 If a Member resigns during their term of office, all IT equipment and accessories must be returned within a timescale agreed with the Head of Governance Support. If the IT equipment is not returned to the Council, the market value of the device will be deducted from the Members' members' allowances or otherwise recouped by other action(s).

9.5 In the year of an election, all IT equipment and accessories must be returned prior to the election, in a timescale agreed between the Head of Governance Support, the Head of IT and Group Leaders.

10. Confidentiality

10.1 The Member will be able to access confidential and/or exempt Council information using the equipment provided. The Member is responsible for ensuring the continued security of any such information which they receive. The Member is reminded of their obligations under the Council's Code of Conduct for Members not to disclose such information to any third party. This includes the forwarding of any information by way of email or any other method.

10.2 Some of the data will be personal data relating to individuals. The unauthorised processing or disclosure of such data is prohibited under Data Protection Law and its associated statutory instruments and the Member is responsible for ensuring that there is no such unauthorised disclosure from the IT equipment or from the Council's Information Management systems.

10.3 Some of the data available on the IT equipment may be subject to request under the Freedom of Information Act 2000 or the Data Protection Law. As such the Member must make available any such data in response to a request received by the Council.

11. Restrictions upon use

11.1 The Member shall not use the IT equipment (or knowingly permit its use by others) for any purposes that might reasonably be thought by an ordinary member of the public to bring the Member or his/her office or the Council into disrepute.

11.2 The Member shall only use the equipment provided in line with the existing Council Policies for IT equipment and service usage. This especially includes the IT Computer Security Policy.

11.3 Legislation applies to the use and operation of the computer and associated equipment. Members need to be aware that this includes the following statutes and that they should therefore exercise all due care to avoid infringing them:

(a) Data Protection Law, including the General Data Protection Regulation (GDPR) and Data Protection Act 2018;

(b) Freedom of Information Act 2000;

(c) Computer Misuse Act 1990;

(d) Copyright, Designs & Patents Act 1988;

(e) Human Rights Act 1998;

(f) Regulation of Investigatory Powers Act 2000;

(g) Malicious Communications Act 1988;

(h) Anti-Terrorism, Crime & Security Act 2001;

(i) Obscene Publications Acts 1959, 1966;

(j) Code of Connection (also known as CoCo compliance); and

(k) Privacy and Electronic Communications Regulations 2003.

11.4 The Council reserves the right to restrict the use of the IT equipment and associated equipment, if it has reason to believe that the use of the IT equipment is likely to offend against any legislative requirement.

11.5 The Council reserves the right to restrict the use of the IT equipment and associated equipment, if it has reason to believe that the use of the IT equipment is likely to offend any provision in this Local Agreement.

11.6 In particular the Council reserves the right to:

(a) remove or disable any software or equipment; and

(b) remove any information stored on the computer.

11.7 Special rules apply to the use of Council resources in relation to publicity. These are set out in Appendix 1.

11.8 No auto forwarding of emails is allowed outside of the Torbay Council Network.

12. Overseas Travel

12.1 Before a Member requests to take their IT equipment overseas, they shall consider if their work could be carried out by a fellow Ward Member or if a neighbouring Ward Member can pick up any issues in their absence and, for those Members who hold positions of Special Responsibility, a fellow Cabinet Member, Scrutiny Lead or Chair/Vice-Chair.

12.2 If a Member requires use of their IT equipment abroad to fulfil their Member duties, they shall email IT ServiceDesk at ServiceDesk@torbay.gov.uk at least five days before they travel abroad, setting out which countries they need IT access from, and between which dates. IT Services' approval shall be obtained before the Member travels abroad and the Member will only be permitted to use their equipment in countries which are deemed by IT Services to provide secure access. If the Member does not obtain permission prior to travel, their IT access will be denied.

12.3 The Member is responsible for the safe transport of any Council equipment when travelling overseas.

13. Breaches of this Protocol

13.1 Breaches of this Protocol may also constitute a breach of the Members' Code of Conduct and, as such maybe referred to the Monitoring Officer and then the Standards Committee.

Appendix 1

Special rules apply to the use of Council resources in relation to ‘publicity’ which is defined as 'any communication in whatever form addressed to the public at large or to a section of the public'. This will include press releases and letters to the media (unless clearly marked "not for publication") but does not cover letters or emails to individuals, unless this is on a scale which could constitute 'a section of the public’.

The local authority is prohibited from publishing political material by virtue of section 2 of the Local Government Act 1986. The Act states that:

"**Section 2**

1. A local authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.

2. In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters:

    a. whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another.

    b. where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

3. A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves."

Although Section 2 applies to all publicity produced by the local authority it is obviously particularly important to be sensitive to the provisions of the Act at election time. Further guidance on the subject of publicity is contained in the Code of Recommended Practice on Local Government Publicity (https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity).

The Code also specifically covers activity around elections, referendums and petitions.

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Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct

1. Introduction and role of Independent Persons

1.1 Torbay Council and Brixham Town Council are required to have a Code of Conduct which deals with the conduct expected of their elected and co-opted members when they are acting in their official capacity. The Code of Conduct is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.

1.2 The obligations in the Code of Conduct only apply when a Member is acting, holding themselves out as acting or giving the impression that they are acting in their official capacity.

1.3 Torbay Council is responsible for administering its own Code of Conduct and the Code for Brixham Town Council. Torbay Council is therefore required to have in place arrangements under which allegations against members can be investigated and decisions on allegations can be made.

1.4 Torbay Council is required to appoint at least one Independent Person whose views may be sought by the Council, usually through the Monitoring Officer, or by subject members whether they are members of Torbay or Brixham Councils. The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. There is no right for the complainant to seek the views of the Independent Person and no such contact will be permitted.

1.5 The Independent Persons do not represent and nor are they advisors to the subject member or the Council. They must remain completely impartial and objective. Their only role is to assess complaints and form a view on them.

1.6 This protocol sets out the procedure for submitting a complaint alleging that a member has breached the Code of Conduct and the procedures that will be followed in dealing with such complaints. It also sets out the criteria for assessing a complaint.

1.7 All allegations will be dealt with objectively, fairly and consistently. Regard will be had to the public interest and the Council's fiduciary duty to council tax payers.

1.8 Within this protocol references to the Monitoring Officer include the Monitoring Officer or his/her nominated representative(s).

1.9 In this protocol the term 'Code of Conduct' means the Code of Conduct applicable to the subject member.

1.10 In this protocol the term 'member' means any councillor or co-opted member.

1.11 In this protocol the term 'subject member' means the member against whom the allegation has been made.

2. Submitting a complaint

2.1 All complaints must be submitted in writing to the Monitoring Officer, but this includes fax and electronic submissions. We will assist complainants if they have a disability that prevents them from making or makes it difficult for them to submit their complaint in writing. We can also help if English is not the complainant's first language.

2.2 Complainants are encouraged to use our complaints form which we can send out as a hard copy or which is available in electronic format from our web site. Further information and the complaint form are available at: http://www.torbay.gov.uk/index/yourcouncil/councillorsdecisions/behaviourinterestsstandards.htm

2.3 If a complainant makes a verbal complaint we will ask that the complaint is confirmed in writing unless the Monitoring Officer is satisfied that the circumstances justify a departure from the requirement that complaints are made in writing. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which we do not consider to be justifiable we will take no further action on the complaint.

2.4 Anonymous complaints will be rejected. This does not include complaints where the complainant requests confidentiality (see section 7 below and on the complaint form).

2.5 Some complaints will fall outside of the scope of this protocol. If that happens the complaints will be forwarded to the relevant officers in the Council and where appropriate referred to the Council's corporate complaints, the complainant will be advised of this.

2.6 To submit complaints electronically complainants are requested to use the on-line form at the link in paragraph 2.2 above.

All complaints must be sent or delivered to:

The Monitoring Officer
% Governance Support
Torbay Council
Town Hall
Castle Circus
Torquay TQ1 3DR

3. Processing and determination of complaints

Initial Assessment – Stage 1

3.1 When a complaint is received which is within the scope of this protocol we will aim to acknowledge receipt within 5 working days.

3.2 The Monitoring Officer will carry out an initial assessment of whether the alleged behaviour could amount to a breach of the Code of Conduct and therefore within this protocol. This will normally be done within 10 working days. If the allegation could not amount to a breach of the Code of Conduct or is considered to be within one or more of the criteria set out below the complaint will not be progressed beyond this

initial assessment stage:

- If the complaint is the same or substantially the same as a complaint previously dealt with within the subject member's term of office
- If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- If the complaint is insubstantial
- If the complaint discloses a minor or technical breach of the Code that it would not be in the public interest to pursue
- If the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive
- If the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is covered by the Council's policy on persistent and vexatious complaints
- If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter
- If the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration
- The complainant has suffered no significant injustice or emotional upset from the breach complained about

Provided always that if the complaint falls into one or more of the above categories, but is deemed sufficiently serious by the Monitoring Officer, then the complaint may be progressed at the Monitoring Officer's discretion.

3.3 At this stage, if the complaint is not to progress further the Monitoring Officer will notify the complainant in writing of that fact and with the reasons. The Monitoring Officer will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. Where the subject member is a member of Brixham Town Council, the Monitoring Officer will also provide the same information to Brixham Town Council's Clerk. The name of the complainant will be disclosed to the subject member and, where appropriate, the Brixham Town Council's Clerk unless confidentiality has been requested and the Monitoring Officer considers the request to be justified.

3.4 Notwithstanding paragraph 3.2, the Monitoring Officer will in appropriate circumstances pass to the police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

Assessment of Complaints – Stage 2

3.5 For those complaints which are to be taken beyond the process detailed in the preceding paragraphs, the following steps will be followed. The Monitoring Officer and the subject member may seek the views of the nominated Independent Person at any time during this process. If considered necessary by the Monitoring Officer he or she may convene a panel of members of the Standards Committee to assist him or her with the consideration and determination of the complaint including any preliminary hearing. The Monitoring Officer may do this at any time during the process. Where a complaint is in respect of a breach of Brixham Town Council's code of conduct the Monitoring Officer will ask the Clerk to Brixham Town Council to

nominate a member of Brixham Town Council to sit on any such panel.

Step	Action
1	The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant unless any confidentiality request has been agreed, and also the name and contact details of the Independent Person who has been nominated for the complaint and who the subject member may contact to seek their views. If the Monitoring Officer considers it appropriate the Clerk to Brixham Town Council will be notified of the complaint. At this stage the subject member will be given an opportunity to provide the Monitoring Officer with a written response to the complaint. Ordinarily we will ask the subject member to restrict their written comments to two sides of A4 but they will be permitted to provide copies of supporting documents.
2	The Monitoring Officer will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member.
3	The Monitoring Officer will determine the complaint in accordance with the Assessment Criteria set out in Annex A. The options the Monitoring Officer has are: (i) to make no finding as to whether there has been a breach of the Code and take no further action; (ii) to make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate; (iii) to find no breach of the Code; (iv) to find a breach of the Code without an investigation but impose no sanction; (v) to find a breach of the Code without an investigation; (vi) to require the complaint to be investigated to determine whether there has been a breach of the Code and the seriousness of the breach; (vii) No further action; (viii) Referral for other action; and (ix) to conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated, by the police where appropriate, to determine whether a prosecution should be brought.
4	The outcome of the determination of the complaint will be notified in writing to the complainant, the subject member and, where appropriate, the Clerk to Brixham Town Council within 5 working days of the determination.

3.6 The above steps 1 to 4 will normally be conducted within 28 days of receipt of the complaint. If it is not possible to do this within this time the complainant, subject member and, where appropriate, the Clerk to Brixham Town Council will be contacted and advised of the delay and provided with an estimate of when the Steps will be completed.

4 What happens following assessment of complaints?

4.1 Any action or investigation will be implemented. If other action is determined as appropriate and either party declines to cooperate that will be reported to the Monitoring Officer who may decide to deal with the complaint under another option under step 3 in the table above. Where the subject member belongs to a political group any failure by that subject member to cooperate will be reported to their group leader by the Monitoring Officer.

4.2 If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution the appropriate procedures of the police or the Council will be followed so as to protect the integrity of the investigation.

4.3 A report setting out all the complaints received and what action was taken regarding them will be forwarded to members of the Standards Committee on a quarterly basis.

4.4 Where an investigation is deemed appropriate investigations will be carried out in accordance with the guidance on 'How to Conduct and Investigation' produced by Standards for England that was applicable to the Code of Conduct for Members pursuant to the Local Government Act 2000. Prior to the final investigation report being issued the Independent Person shall be asked for any comments they may have in respect of the investigation report and the investigator must take into account these comments but is not obliged to follow them. Any comments of the investigator will be included as part of the final report.

4.5 Any hearings following investigation will be dealt with in accordance with Annex B to this protocol.

5 General rules concerning assessments – public access to meetings and information

5.1 Should the Monitoring Officer decide to convene a panel of the Standards Committee to assist him or her in the consideration or determination of a complaint such meetings shall be deliberative only and shall not be open to the public. The decision as to how the matter should be progressed shall remain the decision of the Monitoring Officer. The press, members, officers (except the Monitoring Officer and Governance Support Officer), members of the public, the subject member and the complainant will not be permitted to attend the meetings.

5.2 Data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

5.3 On completion of the assessment a written summary will be published in the form of a decision notice. Once this has been sent to the subject member and the complainant a copy will be placed on the Councils web site.

6 Withdrawal of complaints by Complainants

6.1 Request to withdraw complaints will normally be granted but in considering such a request from the complainant the Monitoring Officer will consider the following factors:

(i) Whether the public interest in taking action on the complaint outweighs the

complainant's desire to withdraw it;

(ii) Whether the complaint is such that action can or should be taken on it without the complainant's participation; and

(iii) Whether there appears to be an identifiable underlying reason for the request to withdraw the complaint such as whether there is information to suggest that the complainant may have been pressurised into withdrawing the complaint.

7 Complainant confidentiality

7.1 The subject member will, in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.

7.2 Each request for confidentiality will be considered on its merits and in determining such a request the following will be considered:

(i) Whether the complainant reasonably believes that they, or those connected to them, will be at risk of harm if their identity is disclosed;

(ii) That the complainant is reasonably concerned about the consequences to their employment, or those connected to them, if their identity is disclosed;

(iii) That the complainant, or somebody closely connected to them, suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that that is the case; and

(iv) Whether the public interest in proceeding with the complaint outweighs the complainant's wish to have their identity withheld.

7.3 If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it.

Annex A - Complaint Assessment and Determination Procedure

Assessment Criteria

1. Introduction

1.1 All complaints and reviews will be considered on their merits and according to the facts.

1.2 The Monitoring Officer will determine when it is appropriate to seek the views of the Independent Person.

1.3 These assessment criteria, will be used as guidance in the consideration and determination of complaints. However, due to the wide variety of complaints received by the Council, avoiding the perception of inconsistency, even in assessing complaints, is no easy task. For example two complaints may be about the same aspect of the Code but differ considerably in terms of the facts, how serious they are and there may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons the assessment criteria can only be a guide.

2. The Assessment Criteria

Overriding criteria

These three tests will be applied during the initial assessment of a complaint:

- Is the complaint about one or more named members of a relevant authority?
- Was the subject member in office at the time of the alleged conduct?
- If proven, would the complaint disclose a breach of the Code of Conduct?

No finding of whether there is a breach of the Code

If, based on the facts, it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an investigation, having regard to the public interest, this is the appropriate finding to make.

No finding of whether there is a breach of the Code but action other than investigation is appropriate

Where, based on the facts, it is not possible to determine whether there has been or may have been a breach of the Code and having regard to the public interest, the alleged conduct does not merit an investigation. If the allegation and any response from the subject member disclose an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make.

Finding of no breach of the Code

If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation or training might still be considered.

Finding of a breach of the Code without an investigation

A finding that the Code of Conduct has been breached without the need for an investigation

will usually be appropriate in the following circumstances:

- It can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred without the need for an investigation;
- The subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach;
- It can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown.

A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities, that a breach of the Code of Conduct has occurred.

No Further Action

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect it may be appropriate to take no further action.

Referral for other action

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a widespread problem rather than a specific one concerning the members conduct.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
- Does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- Is the council of which the subject member is a member suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to that council?

Referral for Investigation

A complaint should usually be referred for investigation in the following circumstances:

- The complaint has passed all three of the initial tests
- The subject member has denied the allegations but the information presented indicates that there may be a breach of the Code
- On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to either discount or substantiate the complaint and to determine what sanction, if any, is appropriate

Potential offences under the Localism Act 2011

If it is considered that the allegation concerned may disclose an offence under the Localism Act it should be referred to the police or other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions.

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and appropriate sanction, if any.

Annex B – Actions Following Completion of Investigation Report

1. Processing the Investigator's Report

1.1 As soon as possible following receipt of the Investigator's report the Governance Support Team will write to the complainant and the subject member enclosing a copy of the report.

1.2 Where the investigation report makes a finding of no breach, the Monitoring Officer, in consultation with the Chair of the Standards Committee, will consider the most appropriate course of action.

1.3 Where the investigation report does find there to be a breach of the Code of Conduct the Governance Support Team will arrange for three members of the Standards Committee (plus one member of Brixham Town Council where the complaint is in respect of a breach of Brixham Town Council's Code of Conduct) to make up the Hearing Sub Committee and set a date a Hearing is to take place. The complainant and subject member will be contacted with details of when the Hearing is to take place and given a deadline by which to submit the following:-

- Whether they will be attending the hearing and if they will be represented
- The names of any witnesses they will be bringing to the hearing
- What findings of fact (if any) they dispute in the investigator's report
- Any other matters that they would like to be take into consideration

1.4 Prior to the Hearing taking place and after the deadline for responses to the above paragraph from the complainant and the subject member the nominated members of the Hearing Sub Committee will meet with the Monitoring Officer in private to discuss:

(a) The findings of fact in the Investigator's report that are agreed.

(b) The findings of fact in the Investigator's report that are not agreed.

(c) Whether or not the complainant, the subject member and/or the Investigator will attend or be represented or should be asked to attend.

(d) The names of any witnesses who the complainant and/or subject member intend to invite

(e) The comments of the Independent Person in respect of the investigation report

(f) An outline of the proposed procedure for the hearing.

(g) Any other matters the Monitoring Officer considers appropriate.

Following this pre hearing discussion the complainant and the subject member will be informed in writing of persons who will be present at the Hearing and the agenda for the Hearing. At this stage the complaint and/or subject member may also be asked to attend the Hearing if they have not already indicated that they will be attending.

2. The Hearing

2.1 Unless otherwise specified following the pre hearing meeting referred to at paragraph 1.4 above, those required to attend the Hearing shall be the Hearing Sub Committee members, the investigator and a legal adviser (who shall not be the investigator) nominated by the Monitoring Officer. The subject member and complainant and any witnesses either may have nominated cannot be required to attend the meeting although will be expected to attend if requested following the pre hearing meeting.

2.2 The subject member or the complainant may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Sub Committee, another person. Where representation is required by either party subject to this clause the party should notify the Monitoring Officer as soon as possible and failure to notify in good time may mean that the request for representation is refused. **Note**: the member or complainant (as the case may be) must meet the cost of their representation.

2.3 The Hearing Sub Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The Hearing Sub Committee may adjourn to hear legal advice but this advice will then be repeated by the legal advisor in the public forum.

2.4 At the Hearing Sub-Committee, it will not normally be permitted to raise new disagreements over findings of fact in the final report unless there are good reasons for doing so (for example, new evidence becoming available). It is therefore important that the subject member raises any issues of concern with the Monitoring Officer or the Head of Governance Support before the hearing.

3. Preliminary Procedural Issues

3.1 Before the Hearing Sub-Committee considers the Investigator's report it will consider any procedural issues, including requests for paperwork to be withheld from the public and/or for any part of the meeting to be held in private. The Hearing Sub-Committee will then resolve any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

3.2 The Hearing Sub-Committee may adjourn at any time to require further information or a further investigation to be carried out.

4. Making Findings of Fact (Stage 1)

4.1 After dealing with any preliminary issues, the Hearing Sub-Committee will then move to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

4.2 If there is no disagreement about the facts, the Hearing Sub-Committee will move on to the next stage of the hearing.

4.3 If there is a disagreement, the Investigator, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Hearing Sub-Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Hearing Sub-Committee may give the

subject member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

4.4 The subject member will then have an opportunity to make representations to support his or her version of the facts and, with the Hearing Sub Committee's permission, call any necessary witnesses to give evidence.

4.5 At any time, the Hearing Sub-Committee may question any of the people involved or any of the witnesses and may allow the Investigator to challenge any evidence put forward by witnesses called by the member of the complainant.

4.6 If the subject member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement during the pre-hearing process, he or she must give good reasons for not mentioning it before the hearing. After considering the member's explanation for not raising the issue at an earlier stage, the Hearing Sub Committee will then:

(a) continue with the hearing, relying on the information in the Investigator's report;

(b) allow the subject member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or

(c) adjourn the hearing to arrange for appropriate witnesses to be present but only if they believe that those witnesses will attend any adjourned hearing.

4.7 The Hearing Sub Committee will normally move to another room to consider the representations and evidence in private unless there are no significant disagreements about the facts contained in the Investigator's report.

4.8 If the Hearing Sub Committee have withdrawn they will then return for the Chair to announce its findings of fact.

5. Did the Subject Member Fail to Follow the Code of Conduct for Members? (Stage 2)

5.1 The Hearing Sub Committee will then consider whether or not, based on the facts it has found, the subject member has failed to follow the Code of Conduct.

5.2 The subject member will be invited to give relevant reasons why the Hearing Sub Committee should not decide that he or she has failed to follow the Code.

5.3 The Hearing Sub Committee will then consider any verbal or written representations from the Investigator.

5.4 The Hearing Sub Committee may, at any time, question anyone involved on any point they raise in their representations.

5.5 The subject member will be invited to make any final relevant points.

5.6 The Hearing Sub Committee will then move to another room to consider the representations.

5.7 If the Hearing Sub-Committee have withdrawn when they return the Chair will announce its decision as to whether or not the subject member has failed to follow the Code of Conduct.

6. If the Subject Member has not Failed to Follow the Code of Conduct for Members

6.1 If the Hearing Sub Committee decides that the member has not failed to follow the Code of Conduct, it will move on to consider whether it should make any recommendations to the authority.

7. If the Subject Member has Failed to Follow the Code of Conduct (Stage 3)

7.1 If the Hearing Sub Committee decides that the subject member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the member (in that order) as to:

(a) whether or not the Hearing Sub Committee should set a sanction; and

(b) what form any sanction should take.

7.2 The Hearing Sub Committee will move to another room to consider whether or not to impose a sanction on the subject member and, if so, what that sanction should be. On their return, the Chair will then announce the Hearing Sub Committee's decision.

7.3 When deciding on a sanction, the Hearing Sub-Committee will make sure that it is reasonable and in proportion to the subject member's behaviour.

8. Recommendations to the Council

8.1 After considering any verbal or written representations from the Investigator, the Hearing Sub-Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

9. The Written Decision

9.1 The Hearing Sub Committee will announce its decision on the day and provide a short written decision on that day. A full written decision prepared by the Head of Governance Support (or his/her representative) and approved by the Monitoring Officer and Chair of the Hearings Sub-Committee will be published within ten working days.

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Local Protocol – Member Champions

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8. Accountability

9. Training

10. Attendance at Seminars/Conferences

11. Allowances

12. Dispute Mechanism

Annex 1 - Possible Roles of Member Champions

1. Introduction

1.1 Member champions are elected members who act as an advocate or spokesperson for a specific area of the Council's business. The main responsibility of each member champion is to encourage communication and positive action over the issue they represent.

2. Appointment of Member Champions

2.1 The Cabinet is responsible for appointing all the member champions. All group leaders will be consulted before any appointments are confirmed by the Cabinet. Any member of the Council may be member champion, including the Leader of the Council.

2.2 Member champions will be appointed following the whole local government elections that take place every four years and will normally be expected to serve for the period of his/her term of office to ensure some stability in the role. However, an appointment may be made during the four year period to any new position that is established or to a position where there is a vacancy. The appointments made by the Cabinet must be communicated in writing to the Chief Executive and a record of decision published.

2.3 Although there is no legal requirement to apply the political balance rules to the appointments, there will be an expectation that the roles will normally be shared proportionately to reflect the political balance of the Council. However, any appointment should have due regard to the suitability for the role and relevant national and local guidance.

2.4 A member champion may be removed from office at any time by the Cabinet by written notice to the Chief Executive, the member champion being removed and all the group leaders.

2.5 Any member champion may resign from office by giving written notice to the Chief Executive and the Leader of the Council.

3. Role of Member Champions

3.1 Member champions may have a description of their respective roles provided by the decision-maker. Roles may be developed by the relevant Director/Divisional Director in consultation with the relevant Cabinet Member and the champion concerned. A generic role description for champions is set out in Annex 1 to this protocol which will apply to all member champions.

4. The Parameters of the Member Champion Role

4.1 All member champions must act reasonably in their role and recognise and work effectively within the political management and working arrangements adopted by the Council.

4.2 A champion cannot make decisions and must not commit the Council in any way or in a manner that could be interpreted as being contrary to established policy and practice. They may, however, confirm a position as stated in a published policy.

5. Leader of the Council/Cabinet Members – Working Relationship with Member Champions

5.1 The Leader of the Council/Cabinet Members will normally:

(a) acknowledge the right of champions to be consulted on matters relating to their area of interest;

(b) take full account of any views offered by champions prior to any decision taken on matters within their area of interest;

(c) co-operate with champions in the formulation of action plans they have agreed with the relevant officer; and

(d) consider nominating the relevant champion to represent the Council at a relevant conference/seminar on the subject matter of the champions interest.

6. Overview and Scrutiny Co-ordinator/Scrutiny Leads – Working Relationship with Member Champions

6.1 The Overview and Scrutiny Co-ordinator/scrutiny leads will normally:

(a) acknowledge the right of champions to be consulted and to participate in discussions on matters relating to their interest;

(b) ensure there is appropriate engagement or consultation with champions in the formulation of policy;

(c) ensure champions are specifically invited to be contributors to any reviews that have a direct bearing on their interest; and

(d) ensure an opportunity is provided for champions to contribute or to comment on the Overview and Scrutiny Work Programme.

7. Officer Support to Member Champions

7.1 The member champions play an important role in promoting their area of interest on behalf of the Council. In recognition of the importance of the respective roles of champions, officer support will be provided at a senior level.

7.2 Each member champion will be advised by an appropriate officer (normally Divisional Director or above). The officer will meet with the relevant member champion as regularly as the officer and the relevant member champion consider necessary to discuss action plans, current activities, national developments or any other matters relating to the interest being championed.

7.3 The officer concerned will give reasonable support to the member champion, including the provision of Council information, government communications and national publications within their remit.

8. Accountability

8.1 A member champion may be questioned by another member of the Council on their respective area of interest at a meeting of Council in accordance with Standing Order A12.1 in relation to council meetings.

9. Training

9.1 All member champions will normally have the opportunity to attend appropriate training courses contained in the Council's Member Development Programme in accordance with the Protocol on Relations between the Leader of the Council and Political Groups.

10. Attendance at Seminars Conferences

10.1 The attendance of member champions at conferences/seminars relevant to their roles will be in accordance with the Protocol on Relations between the Leader of the Council and Political Groups.

11. Allowances

11.1 None of the member champions are entitled to receive a Special Responsibility Allowance (SRA) for carrying out their role. The Independent Remuneration Panel may consider whether the position of a member champion should attract an SRA.

12. Dispute Mechanism

12.1 In the event that a dispute arises in relation to the operation of this protocol such dispute must be referred to the Chief Executive whose decision on the dispute shall be final. The parties to any dispute are expected to provide the Chief Executive (or any person nominated by him/her to determine the dispute) such information as he/she may reasonably require to make a decision on the dispute.

Annex 1

Possible Roles of Member Champions

The following examples of roles for member champions may be appropriate to include in a job description:

(a) To champion the adopted policy of this Council for the relevant theme;

(b) To promote their area of interest both within and outside the Council;

(c) To contribute to the review and development of policies pertaining to the area of interest;

(d) To challenge and question the Council and (other) Cabinet Members on issues affecting their area;

(e) To attend meetings of the Council, its Committees and the Cabinet and speak on issues (when permitted by the person presiding the meeting) relevant to their area;

(f) To act as a catalyst for change and improvement in service delivery;

(g) To monitor the Forward Plan and seek information from the relevant officers and (other) Cabinet Members about forthcoming business and exert influence on behalf of the interest;

(h) To monitor overview and scrutiny plans and activity and seek information and offer views on relevant review subjects and exert influence on behalf of the interest;

(i) To seek to place appropriate items on member meeting agendas;

(j) To keep other councillors up-to-date with activities relevant to the area of interest;

(k) To network with member champions from other local authorities with the same interest to keep up-to-date with current developments;

(l) To provide positive support, and on occasions, constructive challenge to officers in driving forward the Council's agenda on relevant issues; and

(m) To act as the Council's representative on relevant external bodies where Council representation is required or sought.

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Local Protocol – Consultation Arrangements with Town/Parish Councils and Neighbourhood Forums for Planning Applications

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3. Access to Information .....
4. Public Participation at Meetings of Planning Committee .....
5. Determination of Planning Applications .....
6. Training .....

1. Introduction

1.1 Torbay Council is the statutory Local Planning Authority ('LPA') with responsibility for implementing planning legislation contained in the Town and Country Planning Act 1990, and subsequent related legislation.

1.2 Planning applications are determined by Torbay Council's Planning Committee, by officers using powers delegated to them by the Council and (in exceptional circumstances) by Council.

1.3 By Council resolutions made on 19 June 2019, the Torquay, Paignton and Brixham Peninsula neighbourhood plans were made (adopted) by Torbay Council and now form part of the Development Plan.

1.4 For the purpose of this protocol Brixham Town Council is automatically the Qualifying body for the area covered by the adopted Brixham Peninsula Neighbourhood Plan (BPNP) with Broadsands, Churston and Galmpton Neighbourhood Forum (BCG NF) for the unparished parts of the BPNP. Torquay Neighbourhood Forum is the 'Qualifying Body' for the Torquay Neighbourhood Plan. Forums have formal status for five years from the date of Designation. Paignton Neighbourhood Forum's status has expired.

1.5 Under the provisions of Paragraphs 8 and 8A Schedule 1 of the Town and Country Planning Act 1990 the Qualifying Body authorised to act in relation to a neighbourhood area for which a neighbourhood plan has been 'made' must be notified of all:

(a) planning applications;

(b) alterations to planning applications which have been accepted by the LPA, unless they are trivial; and

(c) applications for approval of a matter reserved under an outline planning permission;

that relate to land in its area unless the Qualifying Body in question has notified the LPA in writing that it does not wish to be notified of any such application.

(Note: The Forum status does not affect the status of any adopted Neighbourhood Plan, which will remain part of the Development Plan.)

2. Notification Procedures

2.1 The LPA will fulfil the obligations detailed above by forwarding to the relevant Qualifying Body an email alert with links to the Council's website.

2.2 Where the Qualifying Body have been notified of applications they are required to let the LPA know as soon as practicable whether or not they wish to make representations as to the way a particular application should be determined and in any case, to make those representations within 21 days of being notified.

2.3 There is no statutory requirement for the LPA to notify a Qualifying Body of applications outside its neighbourhood area, although as a matter of good practice this will be done with more significant applications which adjoin the boundary of another neighbourhood area.

2.4 In addition to notifying Qualifying Bodies, the LPA will continue to advertise details of applications as it did before the neighbourhood plans were made. Applications are currently advertised by either site notice, neighbour letters and/or advertisement in the Herald newspaper depending on the application type.

2.5 If the LPA allows an application to be amended before it is determined, the Qualifying Body shall be notified of any significant amendments. Whether or not an amendment is significant shall be determined by the LPA.

2.6 The Qualifying Body may request an extension of time should it be unable to make representations within the 21 day period. Any reasonable requests to delay consideration of applications so as to allow full representation to be made by the Qualifying Body will be at the discretion of the Divisional Director for Place Strategy (in the case of major applications, following consultation with the Chair of the Planning Committee), but will not be permitted to prejudice statutory determination times.

2.7 When a Qualifying Body submits representations within the time allowed, the LPA must take them into account when determining the application. If a Qualifying Body makes representations with respect to an application, it shall receive details of the decision made.

2.8 The LPA must not determine any application before the first of the following to occur;

(a) notification by the Qualifying Body for the area in which the application site is situated that no representations are to be made, or

(b) receipt of written representations from the Qualifying Body, or

(c) the expiry of the 21 day period.

2.9 Torbay Council will only accept a formally-constituted representation (this being a written representation and/or verbal representation) from a Qualifying Body in response to a planning application. Torbay Council will consider a representation 'formally constituted' if it reflects the views of the Qualifying Body as agreed

(a) at a formal meeting of the Qualifying Body; or

(b) following an alternative protocol adopted at a formal meeting of the Qualifying Body and where details of the adopted protocol have been provided to and approved by the Divisional Director for Place Strategy.

The minutes of the meeting (or details of compliance with the alternative protocol) including details of the representations should be available on the Qualifying Body's website (Torbay Council may in other circumstances require confirmation that any representations are formally constituted).

2.10 Written Representations from Qualifying Bodies will normally be from:

(a) the Town Clerk or Chair of the Planning Committee of Brixham Town Council; or

(b) the Chair/Vice-chair of the Broadsands, Churston and Galmpton Neighbourhood Forum or Torquay Neighbourhood Forum;

following a formal meeting, or other adopted protocol contained within the approved Neighbourhood Forum Constitution which is approved by the Council/Local Planning Authority. Written Representations shall be the collective opinion of a Qualifying Body and not solely the view of an individual nominated member.

2.11 A town councillor/individual member of a neighbourhood forum may make written representations in a personal capacity, but in doing so must not seek to associate the Qualifying Body in question with those views.

3. Access to Information

3.1 Torbay Council will provide access to all public information held on planning application files (on request), and will provide photocopies of relevant documents subject to copying charges applicable at the time. Such information is also provided free of charge on the Council's website.

4. Public Participation at Meetings of Planning Committee

4.1 The meetings of the Council's Planning Committee are open to the public and therefore members of the Qualifying Bodies may attend all or part of these meetings (except for confidential and exempt items where the public are excluded).

4.2 Where a Qualifying Body agrees and record its views on a planning application following a formal meeting or other adopted protocol, a representative of the Qualifying Body may speak on a planning application in accordance with paragraph A22 of the Standing Orders – Council Meetings.

4.3 If a Qualifying Body agrees and records its views on a planning application in accordance with paragraph 4.2, it may nominate a representative to speak on its behalf at a meeting of the Planning Committee when that application is considered. Where possible written representations should be submitted to the Local Planning Authority within the statutory timeframe so that they can be considered by the Planning Officer as part of their Report to the Planning Committee. However, where representations have not been submitted in advance The Qualifying Body may still register to speak at the Planning Committee. The Qualifying Body shall notify the Council's Head of Governance Support or his/her representative of this fact by 11.00 am on the day of the meeting, providing details of the person nominated to speak, the agenda item(s) on which the representations will be made and details of the meeting of the Qualifying Body at which the application was considered. Members of Qualifying Bodies will only be permitted to make representations/answer questions on behalf of the Qualifying Body if prior notification has been given in accordance with this paragraph.

4.4 Persons who have a personal or financial interest in the outcome of a planning application (as applicant or otherwise) shall not speak as a representative of a Qualifying Body when representations are made to the Planning Committee although

such persons may apply to make representations in their personal capacity, in the same way as other members of the public can. Where a member of a Qualifying Body has a personal interest in a planning application the Qualifying Body may nominate a member without a personal or financial interest in the application to make representations on its behalf, providing the requirements of paragraphs 4.2 and 4.3 above have been followed.

5. Determination of Planning Applications

5.1 Torbay Council's Planning Committee will determine all 'major' applications, as defined in the terms of reference for that Committee. In exceptional circumstances, major applications may be referred to Council for determination or may be delegated to the Divisional Director for Place Strategy in consultation with the Chair of Planning Committee. All other applications may be determined by an officer under delegated powers [*subject to 5.2 below*].

5.2 Torbay Council will notify the relevant Qualifying Body of every planning decision made by the Planning Committee, Council or by an officer who has authority to determine a planning application under delegated powers.

5.3 Torbay Council will notify the Qualifying Body for a neighbourhood area of any planning appeal its area.

6. Training

6.1 Torbay Council will when practicable arrange for training on planning matters for members of Qualifying Bodies

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Local Protocol – DBS Checks for Members

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2. Purpose of Enhanced Disclosure
3. Using an Existing Disclosure
4. Frequency of Disclosure
5. Confidentiality, Retention, Security and Disposal of Disclosed Information
6. Positive Disclosure
7. Challenging a Disclosure
8. Refusal to Undertake Disclosure

1. Introduction

1.1 Torbay Council recognises its moral and legal responsibility to provide a duty of care for all children, young people and vulnerable adults. Those Members with regular direct contact with young people and vulnerable adults including Cabinet Members and Scrutiny Leads with responsibility for children and adults will therefore be required within 28 days of their appointment to undergo an Enhanced Disclosure check from the Disclosure and Barring Service (DBS). The Chief Executive has authority to determine which additional Members shall be subject to DBS checks. Arrangements will be made to ensure that all prospective candidates are aware of this before becoming a Council candidate.

1.2 The aim of this Local Protocol is to ensure that Members who have regular contact (or are in a position of authority over those with regular contact) with children or vulnerable adults in their official capacity do not present a risk to those persons. Non-elected members who do not have any role in respect of children or vulnerable adults are not required to undergo an Enhanced Disclosure check from the DBS.

2. Purpose of Enhanced Disclosure

2.1 Information contained on the disclosure document for an enhanced DBS check will include details of the following: spent/unspent convictions, cautions, reprimands and final warnings held at national level, (plus information on pending prosecutions or relevant non-conviction information – this additional information is **not** sent to individuals).

2.2 The purpose of Enhanced Disclosure it to protect the public from harm and to protect the reputation of the Council by identifying Members who are unsuitable for positions involving contact with children and vulnerable people. Torbay Council will comply with the DBS Code of Practice and will not discriminate unfairly against the Member on the basis of conviction or other details revealed.

2.3 Any Member who wishes to be considered by the Council for appointment to any position within or outside the Council in which they will have regular contact (or are in a position of authority over those with regular contact) with children or vulnerable adults will be disqualified from such appointment where their disclosure reveals a relevant conviction or caution.

3. Using an Existing Disclosure

3.1 Disclosures from other organisations will not be accepted by the Council. All Members referred to in 1.1 above will be required to undertake a Torbay Council DBS check.

4. Frequency of Disclosure

4.1 Applicable Members will be required to undergo an Enhanced Disclosure check from the Disclosure and Barring Service (DBS) within 28 days of their appointment. Members may be required to undertake further checks within three years of their original disclosure.

5. Confidentiality, Retention, Security and Disposal of Disclosure Information

5.1 Disclosure information will only be made available to staff authorised to receive it in the course of their duties. All positive disclosure information will be sent directly to the Lead Counter signatory in the Human Resources Department and will only be divulged to the Monitoring Officer.

5.2 A record will be kept of the date of issue of a disclosure, the name of the subject, the type of disclosure requested, the appointment for which the disclosure was requested, the reference number of the disclosure and the details of any decision taken whether or not the Member was disqualified from holding a specific position of responsibility. The record will be kept on a computerised system. Positive disclosures will be destroyed by means of shredding once the disclosure has been discussed with the individual.

6. Positive Disclosure

6.1 Following a positive disclosure, the Member will be given the opportunity to be interviewed by the Monitoring Officer and a member of the Human Resources Department so that further consideration may be given, clarifying the circumstances relating to the matters appearing on the disclosure. If the Member declines the opportunity to be interviewed or fails to co-operate in the process, the Monitoring Officer may draw a negative inference from this refusal or failure and act accordingly. The Monitoring Officer will give proper and reasonable consideration to any representations made by the Member. The Monitoring Officer may, where appropriate, in view of the nature of the positive disclosure(s) received, make proportionate recommendations in accordance with paragraphs 6.2 and 6.3. These recommendations may relate to:

(a) whether or not the disclosure should disqualify the Member from holding a specific position of responsibility or appointment to outside bodies; and/or

(b) whether any other restrictions should be made in relation to the Member.

Examples of this might include:

(i) a recommendation that a Member previously convicted of defrauding a vulnerable adult should not be nominated by the Council to serve on the Board of the Integrated Care Organisation or have portfolio responsibility for this area; or

(ii) a recommendation that a Member alleged (but not convicted) to have committed offences against children should not be appointed as Children's Champion or have portfolio responsibility for this area.

6.2 The Monitoring Officer will inform the Chief Executive of all positive disclosures (following the review process, if requested by the Member) and may make recommendations to the relevant Group Leader and Deputy Group Leader (or other senior Group Member(s) if the Member is the Leader or Deputy Group Leader) and/or the Leader of the Council if the Member concerned is a Cabinet Member regarding the suitability of the Member for appointments to positions of special responsibility or outside body.

6.3 The Monitoring Officer may make recommendations to the Member concerned (for example that they do not serve on certain bodies).

6.4 The purpose of this Protocol is to protect children and vulnerable adults and in promoting this objective a precautionary approach shall be adopted. Unless a Member who is the subject of an apparently relevant positive disclosure is able to satisfy the Monitoring Officer (on the balance of probabilities) that the disclosure does not relate to him/her the Monitoring Officer shall normally assume that the disclosure does relate to the Member and act accordingly.

7. Challenging a Disclosure

7.1 If a disclosure has been received and the contents discussed with the Member and they inform the Monitoring Officer that the information is incorrect, the person will be referred to the Disclosure Dispute Line, telephone 0300 0200 190. Unless the Member co-operates fully with this referral, the Monitoring Officer may draw a negative inference from this refusal and act accordingly.

7.2 The disclosure will not be retained for more than six months after the resolution of the dispute. If it is necessary to retain the disclosure information for a longer period, the Disclosure and Barring Service (DBS) will be consulted. In dealing with such a case, the DBS will give full weight to the rights of the subject of such information under the Human Rights and Data Protection Acts.

8. Refusal to Undertake Disclosure

8.1 The requirement for Members to undertake an Enhanced Disclosure check from the DBS is a local provision adopted by Torbay Council.

8.2 Any Member who refuses to undertake an Enhanced Disclosure will be disqualified from being appointed to any position of special responsibility or outside body.

Local Protocol – Members of Harbour Committee

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6. Role of advisors
7. Role of the Head of Tor bay Harbour Authority and Tor Bay Harbour Master
8. Role of the Harbour Liaison Forums and relationship with the Harbour Committee
9. Training on the functions of the Harbour Committee
10. Consultation

1. Introduction

1.1 The Harbour Committee provides an open, accountable and fit for purpose body for the strategic management of Tor Bay Harbour. In turn the Committee provides an expert and more responsive form of governance. It also provides harbour management with the appropriate level of independence and flexibility.

1.2 It's terms of reference have been revised in the light of the Government's publication 'Ports Good Governance Guidance' and following a comprehensive review of this document by the Municipal Ports Working Party. The terms of reference of the Harbour Committee and its composition (including external non-voting advisors) seeks to ensure that Tor Bay Harbour is playing a full and accountable part of the local and regional economy.

1.3 This protocol compliments the Committee's terms of reference and outlines the roles and relationships of the Leader of the Council, Council members, external advisors, Officers and the Harbour Liaison Forums, together with the appointment process for the advisors.

2. Specific Objectives of the Harbour Committee

2.1 The overall objective of the Harbour Committee is to maintain, protect and enhance the harbour whilst at the same time deriving sustainable economic and social benefit, as outlined in the Tor Bay Harbour and Maritime Strategy.

2.2 The specific objectives of the Harbour Committee are:

a) to act as the 'Duty Holder' and be individually and collectively accountable for compliance with the Port Marine Safety Code and their performance in ensuring safe marine operations in the harbour and its approaches;

b) to review and be aware of the Committee's existing powers under local and national legislation and seek additional powers if required to promote safe navigation;

c) to appoint a Designated Person to provide independent assurance about the operation of the marine safety management system;

d) ensure all marine risks are formally assessed and are eliminated or reduced as low as reasonably practicable in accordance with good practice;

e) monitor, review and audit the risk assessment and marine safety management system on a regular basis;

f) publish a safety plan showing how the standards of the Port Marine Safety Code will be met and report performance against that plan at least every three years;

g) ensure the effective financial management of the harbour;

h) have an appropriate awareness and regard for relevant environmental considerations;

i) maintain and develop the harbour infrastructure;

j) support the local economy;

k) provide a positive contribution towards the character and attraction of Tor Bay;

l) comply with legal and regulatory requirements as listed in the Head of Tor bay Harbour Authority and Tor Bay Harbour Master specific delegations;

m) provide open and transparent governance;

n) develop harbour employees;

o) produce a business plan that looks at the future prospects of the harbour and how it will meet the requirements of the stakeholders, who should be fully involved in its development

p) make a positive contribution to the social wellbeing of the local community.

3. Proportionality

3.1 Ideally the composition of the Committee will provide representation from all parts of the harbour and relevant areas of expertise.

3.2 The Harbour Committee is appointed by the Council each year at the Annual Council meeting. The Committee shall be politically balanced and will include specific membership, as far as the proportionally rules allow, as set out the Committee's terms of reference (Schedule 4 of this Constitution) In addition, the Harbour Committee will appoint up to 6 non-voting external advisors.

4. The Role of Committee Members

4.1 As harbour management is a specialist area and requires specialist knowledge, ideally the councillors who will be appointed to the Committee will have a particular interest and experience in the maritime sector and will be willing to serve for a number of years on the Committee. In this way a body of expertise will be developed and continuity maintained.

4.2 Committee members shall be aware of the need for decisions relating to Tor Bay Harbour to be based on sound advice from officers who have a clear understanding of the special needs of ports and harbours and the circumstances in which they operate.

5. Appointment of Advisors

5.1 The Harbour Committee will appoint a Harbour Appointments Sub-Committee. The role of the Sub-Committee will be to consider applications for the five external advisor positions on the Harbour Committee and recommend to the Harbour Committee the persons who should be appointed to those posts.

5.2 Advisors will normally be appointed for a term of 3 years. However, initial appointments will be of varied durations to ensure that vacancies occur on a rolling programme, for example at least one advisor will retire each year.

5.3 A recruitment exercise will be undertaken for the appointment of advisors to the Committee and will be made following open advertisement and an appropriate recruitment exercise. Appointments will be merit based, but have regard to the

desirability of securing reasonable representation from stakeholders. In addition, advisors will have appropriate skills and experience relevant to harbour functions for example:

a) boardroom experience and strategic thinking;

b) a business background in the marine leisure industry;

c) recent and relevant commercial expertise;

d) recent and relevant health and safety expertise;

e) experience of company management;

f) business background in shipping, fishing or cargo activity;

g) experience in finance and management accounting;

h) recent and relevant legal expertise;

i) recent and relevant environmental expertise; and

j) other relevant experience.

5.4 Before recruiting, the Harbour Appointments Sub-Committee will undertake a skills audit to assess the balance of skills required to effectively govern the harbour and deliver against the business plan. These skills should be considered for both councillor members and advisors. The results of the skills audit will then identify the skills gap and inform the recruitment process.

6. Role of Advisors

6.1 Although external advisors to the Harbour Committee do not have voting rights, they play an important role in providing guidance and advice to the Committee. Also the advisors contribute to the mixture of skills on the Committee and bring relevant expertise, local representation and independence.

6.2 Advisors are expected to demonstrate the following personal skills and competencies:

a) drive, vision, independence and confidence;

b) challenging and proactive approach to committee business;

c) ability to motivate and engender respect;

d) negotiating and communication;

e) impartiality and integrity;

f) interpersonal skills – the ability to develop good relations inside and outside of the Committee;

g) ability to work as a team member and to be supportive of colleagues;

h) ability to make a constructive contribution to group discussion e.g. able to give

a clear expression of ideas;

i) analytical approach to problem solving;

j) ability to formulate strategy; and

k) have a grasp of priorities.

6.3 Harbour Committee advisors are not subject to the Code of Conduct for Members and are not required to register their interests. However, advisors must ensure that they do not unfairly seek to secure an advantage or disadvantage for any person. Advisors shall act and/or advise only for and on behalf of the harbour as a whole.

6.4 Advisors shall consider whether they have individual interests on matters being considered by the Committee and declare such interests (including details of those interests) at Committee meetings. When an advisor has declared an interest, it will be recorded in the minutes, but the advisor may normally remain in the meeting and speak on the matter unless the Committee resolves otherwise.

6.5 Whilst carry out their duties, in relation to the Harbour Committee advisors shall:

a) promote equality by not discriminating unlawfully against any person (including grounds of gender, race, disability, sexual orientation, religion, belief or age);

b) treat others with respect; and

c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of the Council.

6.6 A Harbour Committee advisor must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the consent of the Harbour Committee or the Council's Monitoring Officer, or unless he/she is required by law to do so. Harbour Committee advisors access to exempt or confidential reports shall be at the discretion of the Chair and advisors shall be permitted to remain in the meeting when consideration is given to such matters where the press and public would be excluded. Any report of this nature given to the advisors must be returned to the Governance Support Officer at the end of the meeting and the advisors must not divulge the contents of the report to any third party. At the end of each meeting of the Committee where confidential/exempt information has been disclosed in the presence of the advisors, a formal undertaking must be signed by each of the advisors to adhere to the requirements of this Protocol with respect to the non-disclosure of such information. The Harbour Committee may resolve to exclude the Harbour Committee advisors, should they consider it necessary, following advice from the Monitoring Officer or his/her representative.

7. Role of the Head of Tor bay Harbour Authority and Tor Bay Harbour Master

7.1 The role of the Head of Tor bay Harbour Authority and Tor Bay Harbour Master is to ensure the safe and efficient operation of the statutory harbour of Tor Bay (including the harbour estate) and its enclosed ports and to undertake the day to day management of Marine Services in support of that role. The Head of Tor bay Harbour Authority and Tor Bay Harbour Master also carries out all the statutory duties of Harbour Master for Tor Bay Harbour, these duties are outlined in the Officer Scheme of Delegation.

7.2 In relation to the Harbour Committee, the role of Head of Tor bay Harbour Authority and Tor Bay Harbour Master is to provide advice and guidance to the Harbour Committee, such as:

a) assisting in the recruitment process for the advisors;

b) providing the Committee with strategic advice to inform its decision-making;

c) providing the Committee with clear financial and operational reports to enable the Committee to make accurate and balanced decisions; and

d) being responsible for ensuring that the Harbour's statutory and legislative framework is fully fit for purpose.

7.3 The Harbour Committee shall not seek to interfere directly in the day to day management of Tor Bay Harbour. However, the Committee should understand how its decisions impact on the running of Tor Bay Harbour and the wider economy.

8. Role of the Harbour Liaison Forums and Relationship with the Harbour Committee

8.1 Two Harbour Liaison Forums have been established namely Torquay/Paignton Harbour Liaison Forum (covering Torquay and Paignton Harbours) and Brixham Harbour Liaison Forum (covering Brixham Harbour). The membership of the Forums includes a full range of stakeholders such as harbour users and others who derive direct benefit from Marine Services, together with those who derive an indirect benefit.

8.2 The role and remit of the Forums is to provide a method of consultation on day to day management and operational issues in relation to the three enclosed harbours. They also used for consultation on strategic matters.

8.3 The Harbour Committee will have regard to the views expressed by the Harbour Liaisons Forums by receiving the minutes of Forum meetings. Further details of consultation are set out in paragraph 10 below.

8.4 As part of the Harbour Committee's terms of reference, it will recommend the format, composition and governance of the Harbour Liaison Forums and keep the arrangements under review. The Harbour Committee will seek to encourage openness and transparency in the Forums' selection of their membership.

9. Training on the Functions of the Harbour Committee

9.1 All members and advisors will undertake appropriate training. This training will cover port and harbour operation, statutory and regulatory obligations, the role of the Duty Holder under the Port Marine Safety Code and governance issues. The training will also link to the Members' Development Programme.

10. Consultation

10.1 In light of the overall and specific objectives of the Committee, it is important that, at all times, a balance is struck that respects all stakeholders (not just one group). In achieving this the Committee will take into account what constitutes the common good for all stakeholders (current and future) and the harbour itself. This will ensure that the needs and views of both beneficiary and non-beneficiary stakeholders are

not overlooked or discounted. This balance is met by ensuring a representative of the Committee is a member on the Harbour Liaison Forums and by the Harbour Committee receiving the minutes of the Harbour Liaison Forums (as referred to in paragraph 8.3 above).

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Local Protocol on Civic and Ceremonial

1. Introduction

1.1 This Protocol is provided to ensure a consistent approach in respect of civic and ceremonial events, and to ensure that the role of civic and ceremonial promotes the reputation of Torbay Council ('the Council') and to apply correct etiquette.

2. Key responsibilities of the Civic Mayor and Deputy Civic Mayor

2.1 Key responsibilities are as set out in the Job Descriptions for the Civic Mayor and Deputy Civic Mayor in the Council's Constitution. The Civic Mayor acts as an ambassador for the Council and also for the Borough of Torbay, as a non-political, impartial figure, representing the whole community. The Civic Mayor visits communities and businesses, representing the Council and the Borough, and they can also welcome delegates, dignitaries and visitors to Torbay on behalf of the community and does so as a non-political, impartial figure.

(Note: For clarity, the Leader of the Council's role is to act as an ambassador for the Council promoting its work and acting as its principal political spokesperson.)

2.2 The Civic Mayor, Deputy Civic Mayor and their Consorts/Escorts, when undertaking their civic and ceremonial roles shall:

i. Conduct themselves in a manner appropriate and fitting to their positions, in accordance with the requirements of the Council's Constitution, generally and in particular, the Code of Conduct for Members;

ii. Act in a non-political and impartial manner;

iii. Not bring the Council into disrepute, through abuse of office;

iv. Have regard to advice given by the Council's Governance Support and Events Team;

v. Not attend any function or otherwise give support to any organisation or person, whose objectives are contrary to law and/or Council Policy;

vi. Not solicit engagements or visits at home or otherwise procure favours or gifts by virtue of office;

vii. Not overspend the budget/allowance allocated to the Civic Mayor; and

viii. Be capable of undertaking the demands of the role (for example to be able to: maintain high levels of concentration during long Council meetings; to cope and manage controversial debate at Council meetings; attend a large number of civic events, including during unsocial hours; hold and engage an audience at civic events for long periods of time; and attend civic events which may be held outside in inclement weather).

2.3 The ability to meet the criteria and responsibilities outlined in paragraph 2.2 above, shall be taken into account by the Council, when considering nominees for the roles of Civic Mayor and Deputy Civic Mayor.

3. Annual Meeting of the Council and conduct at Council Meetings

3.1 The election of a Civic Mayor of the Council and Deputy Civic Mayor shall be the first item of business conducted by the Council, in accordance with the Local Government Act 1972.

3.2 The Civic Mayor's term of office is one municipal year, and during this time, they continue to be a Member of the Council. Whilst the Civic Mayor shall preside over meetings of Council, with political neutrality, it is recognised they will exercise their vote and use their casting vote as they determine.

3.4 The incoming Civic Mayor and Deputy Civic Mayor shall make a declaration of acceptance of office and oath of allegiance, when accepting the Term of Office at the Annual Meeting of Council.

3.5 Where the Civic Mayor wishes to hold a civic lunch, this may be held on the same day as the Annual Council meeting, with an adjournment for the Council meeting to reconvene at 5.30 pm, to consider the remainder of the Council business on the agenda. Consideration must be given to the suitability of venue and convenient timing of the lunch, before arrangements are put in place. In the year of an all Council election, the civic lunch will be held on a later date in the Municipal Year. The annual photo will be taken immediately after the ceremonial meeting.

4. Civic Events

Below is a list of typical events which are organised during the Civic Mayor's Year in Office.

4.1 Civic Service

The Civic Service is normally held at the Civic Mayor's Chaplain's place of worship. Alternatively, the Civic Mayor may request a different venue which can be considered, subject to its suitability to include capacity and accessibility requirements. The date of the Service shall be decided by the Civic Mayor, in consultation with the minister or other person who is responsible for conducting the Service. The Events Team will support co-ordinating the Service. The date for the Service must not clash or coincide with any other elected Member event(s); Council or Committee meetings or major event(s), as identified by the Events Team.

The Civic Service can be held at any time during the Civic year, but historically it is usually held in late September/October.

Civic Dignitaries from the Council's designated list, together with other individuals identified by the Civic Mayor, will be invited to attend the Service and partake in any refreshments the Civic Mayor wishes to provide after the Service.

4.2 Remembrance Sunday

Remembrance Sunday is held on the Sunday nearest to the anniversary of Armistice Day, being the 11 November at 11 am. The Service of Remembrance is led by the Civic Mayor's Chaplain or other representative of the Civic Mayor, following which the Civic Mayor will lay a wreath in memory of those men and women who gave their lives for their country.

4.3 **Miscellaneous events**

Various miscellaneous events are attended by the Civic Mayor, some examples of which are listed below:

a. Hosting Royal Visits upon request by the Lord Lieutenants Office;
b. Twinning events – Torbay is twinned with the German town of Hameln and Hellevoetsluis in The Netherlands;
c. Events to raise funds for the Civic Mayor's chosen charities;
d. Education Awards and Graduation Ceremonies;
e. Opening of Fayre's/Fetes/Garden Parties/Coffee Mornings/100th Birthday celebrations;
f. Presenting Awards and Prizes to individuals and organisations;
g. Art Exhibitions and presentations at local schools;
h. Firework Displays;
i. Armed Forces Day; and
j. Other Local Authority Civic events to which the Civic Mayor has received an invitation.

5. Civic Invitations

5.1 Public organisers of events may request the Civic Mayor to attend events. Duties which the Civic Mayor may carry out at such events include:

a. Attending functions within Torbay, or on occasions outside the Bay, with prior agreement from the Head of Governance Support, as a Ceremonial Representative of the Council (Note: for events outside the Bay, the Civic Head from that area will be the lead figure head for the event, with Torbay's Civic Mayor/Deputy Civic Mayor, being an invited guest);
b. Undertaking official openings or presentations within Torbay on behalf of the Council; and
c. Representing the Council during Royal visits to the town when requested by the Lord Lieutenant's Office.

5.2 All invitations for the Civic Mayor to attend such events shall be sent to the Governance Support Team and not directly accepted by the Civic Mayor. This is to avoid clashes of appointments and to consider the suitability of the event.

5.3 Priority will be given to events within the Borough which promote Torbay. Although invitations to events held outside Torbay can be considered, in consultation with the Governance Support Team. Attendance at events held outside Torbay will only be accepted if it enhances the promotion of Torbay. Invitations will not normally be accepted if the invitation cannot be reciprocated, for example, civic dinners hosted by other local authorities.

5.4 Event organisers are required to give as much notice as possible of their upcoming event. In the case of invitations being received less than 72 hours before an event, the Head of Governance Support reserves the right to decline attendance at the event on behalf of the Civic Mayor.

5.5 If the Civic Mayor is unable to attend an event to which they have been invited, the Deputy Civic Mayor will be invited to attend to represent the Council. In the event

that the Civic Mayor and Deputy Civic Mayor are not able to attend and it is appropriate to invite an alternative representative, the most recent former Civic Mayor can be invited to attend subject to agreement of both the Civic Mayor (or Deputy Civic Mayor in the absence of the Civic Mayor) and the Head of Governance Support.

5.6 Invitations to functions should not be sent direct to or accepted by the Deputy Civic Mayor. The Deputy Civic Mayor will not normally attend functions in his/her own right, except when deputising for the Civic Mayor.

5.7 It is not normal practice for the Deputy Civic Mayor to attend the same events as the Civic Mayor. There are exceptions such as, for example, Remembrance Sunday, Civic Church Service/Carol Concert, Civic Ball/Garden Party, Civic Lunch/Dinner. Invitations received which require the attendance of both the Civic Mayor and the Deputy Civic Mayor will be considered for acceptance by the Head of Governance Support ,in consultation with the Civic Mayor.

The Civic Mayor may provide permission for the Deputy Civic Mayor to wear civic regalia, when attending an event in place of the Civic Mayor.

5.8 Where a commitment has been given for the Civic Mayor or Deputy Civic Mayor to represent the Council/Torbay at an event, the commitment should be honoured unless exceptional circumstances or illness prevent attendance. The Civic Mayor or their representative must notify Governance Support at the earliest opportunity of their inability to attend so that apologies may be given and alternative arrangements made for the Deputy Civic Mayor to attend, where appropriate.

6. Consort or Escort

6.1 The Civic Mayor may identify one person to accompany them to the civic and social activities to which they are invited. Alternatively, the Civic Mayor may choose to attend events alone.

6.2 The position of Consort/Escort is discretionary, and may be a person who is independent of the Council. The Consort/Escort is expected to uphold the high standards of conduct as outlined in paragraph 2 of this Protocol and should not bring the Council into disrepute, either by way of actions or words. The Consort/Escort must appreciate that the role, together with that of the Civic Mayor is politically neutral and therefore political neutrality must be maintained by them when acting in their capacity as Consort/Escort. The Consort/Escort cannot represent the Civic Mayor at civic events, their role is purely to accompany the Civic Mayor to events. The Consort/Escort is not entitled to receive any payment in respect of their role.

6.3 The Civic Mayor may determine whether his/her guest will be referred to as Consort or Escort. Previously it was traditional for a female guest to be referred to as Consort if married to the Civic Mayor and Escort if not, and a male guest, irrespective of marital status, was normally known as the Escort.

7. Appointment of Civic Cadets

7.1 The Civic Mayor may choose to appoint up to three Civic Cadets (who will be nominated by their respective organisations), to accompany the Civic Mayor to key events, such as Remembrance Sunday and the Civic Church Service, to represent their organisations.

7.2 The Civic Mayor will notify the Governance Support Team as to the organisations which they may wish to approach. Those organisations will be responsible for providing Civic Cadet nominations.

7.3 The Governance Support Team will provide a formal letter of appointment, certificate and a copy of the Civic Cadet Protocol to the Civic Cadets (and/or their parent or guardian, if the Civic Cadet is under 18 years of age).

7.4 Where the Civic Cadet is under 18 years of age, the Cadet must always be accompanied by a parent or guardian when performing their duties and travelling to and from events. Civic Cadets are not permitted to travel with the Civic Mayor or Deputy Civic Mayor.

7.5 The Civic Mayor and Deputy Civic Mayor must complete mandatory safeguarding children and adults' training before attending any events with children or vulnerable young people or adults.

7.6 The Civic Mayor and Deputy Civic Mayor will be subject to enhanced Disclosure Barring Service (DBS) checks prior to working with any Civic Cadets.

7.7 Where Civic Cadets are invited to events, the Cadets and their parent and/or guardian (where required) will be sent a meeting request from civic.support@torbay.gov.uk.

7.8 Civic Cadets may be presented with a Civic Cadet Badge to commemorate their appointment, the cost of which shall be paid from the Civic Mayor's Personal Allowance.

8. The Role of the Deputy Civic Mayor

8.1 The Deputy Civic Mayor shall assist in representing the Council on civic or formal occasions as requested by the Civic Mayor and will be expected to deputise where the Civic Mayor is unable to attend events to carry out civic duties.

8.2 If the Deputy Civic Mayor is approached direct and invited to attend a function in their capacity as Deputy Civic Mayor, in his or her own right the invitation must be shown to the Civic Mayor and Head of Governance Support who will decide in consultation as to whether the invitation should be accepted.

8.3 If the Civic Mayor is not able to attend a Council meeting, the Deputy Civic Mayor will take the Chair, where neither the Civic Mayor or Deputy Civic Mayor is present Standing Order A2.2 shall be followed. When the Civic Mayor is present at a Council meeting, the Deputy Civic Mayor shall sit to the Civic Mayor's side on the Dias in order to assist the Civic Mayor in chairing the meeting (for example, identifying councillors who wish to speak about an item under discussion).

8.4 Like the Civic Mayor, the Deputy Civic Mayor usually identifies a companion to accompany them to civic and social events attended in their official capacity. Alternatively, the Deputy Civic Mayor may choose to attend events on their own.

8.5 The position of Deputy Civic Mayor's Consort/Escort is the same as the Civic Mayor's Consort/Escort and details of the role and obligations are set out in paragraph 6of this Protocol.

9. Civic Mayor's Charity

9.1 The Civic Mayor's Charity traditionally raises funds for local charities. The Civic Mayor may decide to support a maximum of two charities. The chosen charity or charities must be registered with the Charity Commission and provide benefit to Torbay's community.

9.2 The Civic Mayor will announce the chosen charity/charities at the Annual Council meeting when they are elected. If the Civic Mayor has chosen to support two charities, it will be for the Civic Mayor to determine how the proceeds raised will be split between the charities.

9.3 Any cheques or proceeds from fund raising events are to handed to the Events Team who will be responsible for processing. All cheques should be made payable to 'Torbay Council'. The Council's Finance department will keep accurate records of income raised and will arrange for payments to be made to the Civic Mayor's charity/charities when the Civic Mayor's Term of Office ends, in accordance with the Council's Financial Regulations.

9.4 Funds raised for the Civic Mayor's charity/charities cannot be used for any other purpose other than that for which it was donated.

9.5 Other events may be organised by local organisations, clubs or institutions, with proceeds given for the Civic Mayor's charity/charities. If the Civic Mayor wishes to hold his/her own charity event, the details and arrangements must be agreed in advance with the Director of Pride in Place.

9.6 It is the responsibility of the Civic Mayor to organise prizes and raffles to raise funds for local charities, if they wish. To support this local businesses, councillors, friends and family may choose to donate prizes to be used for raffles and tombola's,

9.7 The Civic Mayor's charity/charities may be invited to give presentations at some civic events and appropriate guidance on such presentations can be provided by the Governance Support or Events Teams upon request.

10. Civic Mayor's allowance and other costs

10.1 In accordance with the Members' Allowances Scheme, the Civic Mayor is paid a Special Responsibility Allowance. The Civic Mayor is also paid an additional Civic Mayor's Personal Allowance which is separate from the Members' Allowances Scheme to meet expenses. Examples of such expenses are:

a. Clothing;
b. Partner's clothing;
c. Donations to charities;
d. Donate to collections at events attended by the Civic Mayor;

e. Personal hospitality (including lunches and dinners); and
f. One-off events held by the Civic Mayor.

10.2 It is the Civic Mayor's personal responsibility to seek independent financial advice as to the taxable status of the Civic Mayor's Personal Allowance.

10.3 The Council will fund up to £100.00 towards the printing costs for any Torbay Civic Awards certificates.

10.4 If the Civic Mayor chooses to hold a Civic Lunch, Civic Ball or Garden Party and/or a Civic Carol Concert, the full cost of the event (including the cost of officer time) shall be self funding and covered by the sale of tickets which all attendees are required to purchase. Once all the event costs have been paid, any profit will be donated to the Civic Mayor's Charity bank account. Any financial loss incurred as a result of a Civic event shall be met and paid in full by the Civic Mayor personally, where they have acted contrary to Officer's advice.

10.6 At the end of the term of office, the retiring Civic Mayor will receive a Past Civic Mayor's badge, which will be funded from the Civic Budget. The Civic Mayor may purchase a badge for their Consort/Escort which will be ordered on a blue ribbon or another gift and the cost of this will be met personally by the Civic Mayor.

11. The Role of the Civic Mayor's Chaplain

11.1 The Civic Mayor is invited (but not required) to choose a Chaplain to provide support to them during their term of office.

11.2 The Civic Mayor shall ensure that their chosen Chaplain is made aware of the Council's commitment to the values of equality and diversity for all. The Chaplain must be inclusive of those from all faiths/beliefs or those who choose none, when delivering prayers and reflection.

11.3 The role of Civic Mayor's Chaplain is an honorary title and the Chaplain is invited to attend and take part in various civic events, for example, Annual Council, Armed Forces Day, Remembrance Day, Civic Service, Civic Carol Service and the Civic Mayor's Ball or Garden Party.

11.4 The Civic Mayor may request their Chaplain to open Council meetings with a short inclusive prayer or reflection (no more than 2 minutes) and in accordance with paragraph 10.2 above. The Civic Mayor must confirm their intention for their Chaplain to attend Council meetings for the entire municipal year with the Head of Governance Support, prior to the Annual Council meeting.

12. Civic Regalia

12.1 The Civic Mayor's robes of office consist of a red robe, trimmed with fur, a black cocked hat, a lace stock (Jabot) worn around the neck and white gloves. The Civic Mayor may use the Council's robe and hat and the Civic Mayor is expected to purchase their own jabot and gloves.

12.2 Robes cannot be worn without the Chains of Office.

12.3 The Civic Mayor may decide whether or not they wish to wear the robes throughout their term of office. If the Civic Mayor chooses to wear the robes of office during their term, they are only permitted to do so at the following ceremonial occasions:

a. Civic Service;
b. Remembrance Sunday;
c. Royal Visits;
d. Special and public functions connected with the business of the Council at which royalty is present;
e. Council meetings;
f. Civic Lunch/Dinner;
g. any events arranged by the Lord Lieutenants Office requesting the robes be worn;
h. Functions outside the Borough only with the permission of the Council for that area (see paragraph 11.5); or
i. Receiving guests from Cruise Ships (land based only).

Any additional requests for the robes to be worn will be considered by the Head of Governance Support.

12.4 The full Chain of Office shall only be permitted to be worn at the following ceremonial occasions:

a. Civic Service;
b. Remembrance Sunday;
c. Royal Visits;
d. Annual Council meetings;
e. Civic Lunch/Dinner; or
f. any events arranged by the Lord Lieutenant's Office requesting the robes be worn.

For all other events the Civic Mayor shall wear the smaller Day Chain of Office with the Torbay fob. The smaller Day Chain of Office shall not be worn with the robes, with the exception of Council meetings if the Civic Mayor decides to wear robes or where robes have expressly been requested by the event organiser.

12.5 The Civic Mayor shall not wear the civic insignia in another local authority area without the express permission of the Council for that area.

12.6 Civic chains should never be worn with a military uniform. However, a Civic Mayor who is a member of the clergy may wear full canonicals with the chain over the gown. Similarly, the chain may be worn over academic dress.

12.7 The Deputy Civic Mayor's robe consists of a blue robe, trimmed with fur. The Deputy Civic Mayor will wear the Deputy Civic Mayor's civic chains provided by Torbay Council.

12.8 The Civic Mayor and the Deputy Civic Mayor shall be permitted to wear their respective Chains of Office at the same event.

12.9 The main Full Chain of Office and Torbay fob should only be used and worn within the United Kingdom and only when the Civic Mayor is accompanied by a Security Officer of the Council. In the event that there is a need to take civic regalia out of the United Kingdom, this must be approved in advance by the Head of Governance

Support, and the Council's insurers must be notified and the appropriate insurance cover arranged.

12.10 A ribbon and Torbay Fob must always be used by the Civic Mayor and/or the Deputy Civic Mayor when boarding a ship or boat or attending an event on the water instead of the Chains of Office.

12.11 The Civic Mayor's Consort/Escort, may choose to wear the appropriate Chain of Office when accompanying the Civic Mayor to civic events.

12.12 The Deputy Civic Mayor's Consort/Escort will not be entitled to wear a Chain of Office when accompanying the Deputy Mayor to Civic events.

12.13 All Chains of Office and Fobs must be transported in their appropriate storage boxes to prevent any damage. Any loss or damage must be immediately reported to the Head of Governance Support for them to assess and arrange for repair and or an insurance claim to be submitted.

12.14 Due to the fragility of the Council's Mace, it shall only be used at Council meetings and Remembrance Sunday. There is no legal requirement for the mace to be present at any Council meeting or event.

12.15 The Civic Mayor/Deputy Civic Mayor are not permitted to remove civic regalia from its secure storage without prior notification to the Governance Support Team and the Security Team.

13. Addressing the Civic Mayor

13.1 The Civic Mayor shall be verbally addressed as 'Mr/Madam Civic Mayor' or other address requested by the Civic Mayor. The formal and full title of the Civic Mayor is "The Worshipful the Mayor of Torbay" and this title shall be used for formal verbal announcements/introductions and written address (which includes letters and invitations).

14. Receipt of Gifts

14.1 Often gifts will be offered to the Civic Mayor in the course of their civic duty. The Civic Mayor or Deputy Civic Mayor may accept gifts on behalf of the Council and must ensure that these gifts are passed to the appropriate Director or Divisional Director of the Council who will ensure that gifts are logged in the Council's inventories to comply with the Council's Financial Regulations. The Members' Code of Conduct and Local Protocol on Gifts and Hospitality applies and must be followed by the Civic Mayor and Deputy Civic Mayor when any offer of a gift, favour or hospitality is made to them personally.

15. Civic Car

15.1 The Council does not have an official Civic Car and the Council's Security car may be used by the Civic Mayor on the following occasions, when available:

a. Attendance at major civic events organised by Torbay Council where the Civic Mayor will be wearing the main Full Chain of Office (e.g. Remembrance Sunday, Civic Lunch/Dinner and Civic Service); and

b. Attendance at major civic events where an official invitation requests the Civic Mayor to wear the main Full Chain of Office (e.g. Devon Legal Sunday Parade).

16. Use of the Torbay Coat of Arms

16.1 Applications for the use of the Coat of Arms and Badge should be made in writing to the Chief Executive indicating the purpose for which it is required. All applications for use of the Coat of Arms will be determined by the Chief Executive in consultation with the Civic Mayor.

16.2 The Coat of Arms will be used solely by the Civic Mayor for the Civic Mayor's correspondence and for use in conjunction with the Order of Proceedings for Civic Events (i.e. Civic Mayor Making, Honorary Freeman, Freedom of the Borough Ceremony, Civic Service, Civic Lunch/Dinner).

17. Honorary Freeman of the Borough

17.1 The title of Honorary Freeman is the highest honour that a Council of a City or Borough can bestow. All nominations for Honorary Freemen shall be kept confidential and must be submitted to the Head of Governance Support. The Council's procedure for applications for Honorary Freeman must be followed. Honorary Freeman will be presented with a badge on a green ribbon.

17.2 Honorary Freemen can be invited to the following Civic Functions: -

a. Annual Council;
b. Civic Service;
c. Remembrance Sunday;
d. Civic Lunch/Dinner;
e. Honorary Freedom of the Borough Ceremonies; and
f. Various "one-off" events e.g. Jubilee celebrations.

17.3 Honorary Freemen have no legal, social, or royal precedence.

18. Freedom of the Borough

18.1 Freedom of the Borough can be bestowed upon an organisation and this can happen at a Council meeting. Any processions or parade will be held on a date and time mutually convenient for both the Council and the nominated organisation. The parade must be organised and funded by the organisation but hosted by Torbay Council, and the Council will assist with the planning of the event. Organisations that are the subject of the Freedom of the Borough, will be presented with a scroll.

18.2 A representative from organisations who have been honoured with Freedom of the Borough are invited to the following Civic Functions:

a. Annual Council;
b. Civic Service;
c. Remembrance Sunday;
d. Civic Lunch/Dinner;

e. Honorary Freedom of the Borough Ceremonies; and
f. Various "one-off" events e.g. Jubilee celebrations.

18.3 The award of the Honorary Freedom of the Borough does not convey with it any legal rights or responsibilities, other than a ceremonial role at civic functions.

19. Flag Flying

19.1 The Union Flag shall be flown continuously from the flagpole sited on the Town Hall, Torquay. Exceptions to this are:

a. St. George's Day, 23 April, each year, the St. George's Flag will be flown in place of the Union Flag;
b. For the week prior to Armed Forces Day, each year, the Armed Forces Day Flag will be flown in place of the Union Flag; and
c. Any guidance or instruction issued by the Government or Buckingham Palace

19.2 There may be occasions when requests are received for other flags to be flown, for special events or festivals. Such requests will be considered by the Chief Executive, in consultation with the Civic Mayor.

19.3 An event requiring the flying of the Union Flag will take precedence over any other event.

19.4 Half-mast means that the flag is flown two thirds of the way up the flagpole, with at least the height of the flag between the top of the flag and the top of the flagpole, allowing space for the traditionally invisible flag of death.

The Union Flag shall be flown at half mast on the following occasions:

a. From the announcement of the death until after the funeral of the Sovereign, except on Proclamation Day when they will be flown in accordance with National Guidance and the Torbay Council Protocol on Marking the Death of a Senior National Figure.
b. The funerals of members of the Royal Family, subject to special commands from His Majesty in each case.
c. The funerals of Prime Ministers and Ex-Prime Ministers of Great Britain, subject to special commands from His Majesty in each case
d. Other occasions by special command of His Majesty.
e. On the death of the Civic Mayor from the announcement of the death until sunset after the funeral.
f. From the announcement of the death until sunset after the funeral of:-

19.5 An Honorary Freeman of the Borough;

ii. A Serving Councillor;
iii An Ex-Civic Mayor/Civic Mayor (where the Council is formally notified); or
iv A Chief Official.

19.6 If a Flag Day occurs on a day when flags are flying at half mast the flag should still be flown at half mast.

20. Invitations to Royal Garden Parties

20.1 The Council is allocated a number of places each year for persons to attend one of His Majesty's Garden Parties, specifically to celebrate past service. The Chief Executive shall determine who will attend to represent the Borough of Torbay based upon the principles set out below, unless directed otherwise by the Lord Chamberlain's office via the Local Government Association:

a. Places shall be offered equally between elected Members and Torbay Council staff. Where only one place is allocated, the Chief Executive shall determine whether this is offered to an elected Member or Torbay Council staff based on length of service;

b. for elected Members, places shall be offered to the longest serving elected Member on Torbay Council (to exclude breaks in service) in recognition of past service;

c. for staff, places shall be offered to those with the longest years of continuous service working for Torbay Council; and

d. places shall only be offered to those who haven not previously attended a Royal Garden Party as a representative of Torbay Council or any other organisation.

(Note: The Local Government Association can exercise the right to change the number of invitees/invitations made available.).

21. Marking the Death of a significant public figure.

21.1 In the event of the death of a significant public figure, the Chief Executive will instigate the relevant action plan and consult with the Civic Mayor and Deputy Civic Mayor on Torbay's response to such news.

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Local Protocol on Shadow Cabinet

1. Composition

1.1 Normally, the Leader of the largest Political Group that does not form part of the Executive may choose to form a Shadow Cabinet by their nomination from amongst the Members of the Opposition. If so, they shall notify the Head of Governance Support the names of the Members nominated to form a Shadow Cabinet and of any changes in the membership of the Shadow Cabinet which may occur from time to time.

2. Number of Members and Shadow Cabinet Leader and Shadow Cabinet Deputy Leader

2.1 The Shadow Cabinet shall comprise of Members of the Opposition and mirror the Leader of the Council's Cabinet in terms of number and portfolios.

2.2 The Shadow Cabinet shall include a Shadow Cabinet Leader and Shadow Cabinet Deputy Leader.

3. Role and Operation

3.1 The Shadow Cabinet will have collective responsibility for providing an effective challenge to the controlling Administration and constructive political opposition of the achievement of the Council's corporate and service objectives and priorities.

3.2 Shadow Cabinet Members shall be recognised as Opposition spokespersons at Cabinet and Council meetings (where the Shadow Cabinet is not seconding the Cabinet's proposals at Council meetings).

3.3 Regular meetings shall be held between the Leaders and Deputy Leaders of both the Cabinet and Shadow Cabinet, along with Members of the Cabinet and Shadow Cabinet. The purpose of these meetings is to ensure briefing and communication from the Cabinet to the Shadow Cabinet, which in turn shall be effectively cascaded from the Shadow Cabinet through to their respective Opposition group(s) and ward Councillors (where appropriate), to ensure effective communication throughout the Council. Confidentiality shall be maintained on all confidential matters shared with the Shadow Cabinet

4. Officer Support

4.1 In addition to the support provided to the Cabinet and Shadow Cabinet Member meetings (as outlined in paragraph 3.3 above), the Chief Executive, or senior officers shall attend private meetings of the Shadow Cabinet in order to brief the Shadow Cabinet on:

(a) proposals that are to be considered by the Cabinet and that have been published; and

(b) other matters identified by the Shadow Cabinet.

4.2 Officer briefings at private Shadow Cabinet meetings shall be factual and professional and non-political in nature and shall not extend to the evaluation of policy options, justifying or defending proposals of the Cabinet, or revealing information and advice that is properly confidential in nature.

4.3 Officers shall not speak or answer questions at Shadow Cabinet meetings that are open to the general public or anyone who is not an elected Member of Torbay Council, save for any properly appointed External Advisors and any officer present at the request of the Chief Executive.

4.4 Shadow Cabinet Members may hold one to one meetings with a relevant Director as required.

4.5 Individual shadow Portfolio Holders are not holders of office within the Council. However, shadow Portfolio Holders may receive advice and support from the Chief Executive or senior officers. All such advice and support will need to comply with the Local Protocol on Member and Officer Relations and confidentiality shall be maintained on all confidential matters shared.

5. Powers

5.1 For the avoidance of doubt the Shadow Cabinet does not have any Executive powers and in this respect officers cannot be instructed to act on behalf of the Shadow Cabinet or individual Members of the Shadow Cabinet in any way.

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Local Protocol - Indemnity and Insurance for Members and Officers

Indemnity for elected members

1. The Council gives the following indemnities to its elected members subject to paragraphs 2-13 below: -

   (a) That if any act or omission of an elected member in the course of exercising his/her proper powers and duties as a member of the Council does or may give rise to any liability of the Council or the elected member to any third party, the Council will indemnify the elected member against all loss or damage or other legal expenses arising and the Council will not make any claims against the elected member for any loss or damage or legal or other expenses.

   (b) That if any act or omission of an elected member in the course of exercising his/her proper powers and duties as a member of the Council, does or may give rise to any liability of the member to the Council, then the Council will not make any claims against the member for any loss or damage or legal or other expenses.

2. That, subject to paragraph 3, the indemnities shall apply to all actions undertaken, or failures to act, which forms part of or arises from the duties of the elected member on behalf of the Council whilst the elected member is acting within the scope of their authority which shall include when they are acting as the Council's representative on other bodies providing that they act with the written consent of the Council and in accordance with the terms of that consent.

3. That the indemnities shall apply to all actions undertaken, or failures to act, in pursuit of the duties of the elected member on behalf of the Council whilst the elected member is acting outside the scope of their authority which shall include when they are acting as the Council's representative on other bodies providing that;

   (a) They act with the written consent of the Council and in accordance with the terms of that consent and providing further that the elected member reasonably believed that the action, or failure to act, in question, was within the power of the authority, and was also within his or her powers at the time at which the elected member acted.

   (b) Where the action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, or any statement that certain steps have been taken or requirements fulfilled, they believed that the contents of the statement were true, and it was reasonable for them to hold that belief at the time when they acted or failed to act.

4. That, subject to paragraph 11, the indemnities shall apply to the defence of any criminal proceedings.

5. That, subject to paragraph 11, the indemnities shall apply to the defence of any proceedings in connection with the Code of Conduct for Elected Members, pursuant to Part 3 of the Local Government Act 2000 and Part 1 of the Localism Act 2011.

6. That the indemnity shall apply to any loss or damage or legal or other expenses arising from any civil liability which arises as a consequence of any action or failure to act which also constitutes a criminal offence, providing that such liability has not arisen in whole or in part from any fraud, deliberate wrongdoing or recklessness on the part of the elected member.

7. That the indemnities shall not apply to loss or damage or legal or other expenses arising directly or indirectly from:-

   (i) Fraud, dishonesty or a criminal offence, or other deliberate wrongdoing or recklessness on the part of the elected member (save as provided for by paragraph 6)

   (ii) Liability in respect of losses certified by the Council's external auditor as caused by wilful misconduct or where unlawful expenditure has been knowingly or recklessly authorised.

   (iii) Circumstances in which the elected member has not acted in good faith.

8. In relation to loss or damage or expenses relating to the actions of an elected member when they were acting as the Council's representative on other bodies the following additional limitations will apply:-

   (i) Where the management committee or its equivalent is jointly and severally liable, the indemnity to the elected member will be limited to a sum equivalent to the amount for which the member would be liable if all members of the management committee or its equivalent paid an equal amount to discharge the liability.

9. The Council may in its absolute discretion withdraw the indemnities if: -

   (i) The elected member does not notify the Legal Officer (i.e. Head of Legal Services and Monitoring Officer or equivalent) and Chief Finance Officer (Director of Finance or equivalent) immediately they are aware of an incident and/or are notified of a claim.

   (ii) The elected member makes any admission to or negotiates or agrees any settlement with a third party without the prior written consent of the Legal Officer (i.e., Head of Legal Services and Monitoring Officer or equivalent) and Chief Finance Officer (Director of Finance or equivalent).

10. The indemnities shall not apply in respect of all claims falling within the cover provided to elected members under any policy of insurance taken out by the Council or any motor vehicle insurance policy taken out by the elected member.

11. The elected member shall reimburse the Council, or its insurer, for any sums expended by the authority or the insurer in relation to any criminal proceedings, or any proceedings under Part 3 of the Local Government Act 2000 and Part 1 of the Localism Act 2011 where:

(a) In the case of criminal proceedings, if the elected member in question is convicted of a criminal offence, and that conviction is not overturned following an appeal.

(b) In the case of proceedings under Part 3 of the Local Government Act 2000, and Part 1 of the Localism Act 2011 if the elected member admits that he has failed to comply with the Code of Conduct, or if there is a finding in those proceedings that that the elected member in question has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal.

12. The indemnities shall continue in force for as long as the elected member remains liable in law for the act or omission in question.

13. The indemnities shall not extend to any situation where it would be unlawful for the Council to give an indemnity to elected members.

Indemnity for employees

1. The Council gives the following indemnities to its employees subject to paragraphs 2 –12 below: -

   (a) That if any act or omission of an employee in the course of his/her employment by the Council does or may give rise to any liability of the Council or the employee to any third party, the Council will indemnify the employee against all loss or damage or legal or other expenses arising, and the Council will not make any claim against the employee.

   (b) That if any act or omission of an employee in the course of his/her employment by the Council does or may give rise to any liability of the employee to the Council, then the Council will not make any claim against the employee for any loss or damage or legal or other expenses.

2. That, subject to paragraph 3, the indemnities shall apply to all actions undertaken, or failures to act, which forms part of or arises from, the duties of the employee on behalf of the Council, whilst the employee is acting within the scope of his/her employment or authority which shall include when they are acting in relation to work undertaken by the Council for other bodies and work undertaken by the employee for or on behalf of another body, providing that his/her Chief Officer has authorised the work in question.

3. That the indemnities shall apply to all actions undertaken, or failures to act, which forms part of or arises from the duties of the employee on behalf of the Council whilst the employee is acting outside the scope of his/her authority which shall include when they are acting as the Council's representative on other bodies providing that:

   (a) They act with the written consent of the Council and in accordance with the terms of that consent, and providing further that they reasonably believed that the action, or failure to act, in question was within the power of the authority, and was also within their powers at the time at which they acted

   (b) Where the action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, or any statement that certain steps have been taken or requirements fulfilled, they believed that the contents of the statement were true, and it was reasonable for them to hold that belief at the time when they acted or failed to act.

4. That, subject to paragraph 10, the indemnities shall apply to the defence of any criminal proceedings.

5. That the indemnity shall apply to any loss or damage or legal or other expenses arising from any civil liability which arises as a consequence of any action or failure to act which also constitutes a criminal offence, providing that such liability has not arisen in whole or in part from any fraud, deliberate wrongdoing or recklessness on the part of the employee.

6. That the indemnities will not apply to loss or damage or legal or other expenses arising directly or indirectly from: -

   (i) Fraud, dishonesty or a criminal offence, or other deliberate wrongdoing or recklessness on the part of the employee (save as provided for by paragraph 5)

   (ii) Liability in respect of losses certified by the Council's external auditor as caused by wilful misconduct or where unlawful expenditure has been knowingly or recklessly authorised.

   (iii) Circumstances in which the employee has not acted in good faith.

7. In relation to loss or damage or expenses relating to the actions of an employee when they are acting as the Council's representative on other bodies the following additional limitations will apply -

   (i) Where the management committee or its equivalent is jointly and severally liable, the indemnity to the officer will be limited to a sum equivalent to the amount for which the officer would be liable if all members of the management committee or its equivalent paid an equal amount to discharge the liability.

8. The Council may in its absolute discretion withdraw the indemnities if: -

   (i) The employee does not notify the Head of Legal Services and Monitoring Officer or equivalent) and Chief Finance Officer (Director of Finance or equivalent) immediately they are aware of an incident and/or are notified of a claim.

   (ii) The employee makes any admission to or negotiates or agrees any settlement with a third party without the prior written consent of the Legal Officer (i.e., Head of Legal Services and Monitoring Officer or equivalent) and Chief Finance Officer (Director of Finance or equivalent).

9. The indemnities shall not apply in respect of all claims failing within the cover provided to employees under any policy of insurance taken out by the Council or any motor vehicle insurance policy taken out by the employee.

10. The employee shall reimburse the Council, or its insurer, for any sums expended by the authority or the insurer in relation to any criminal proceedings where the employee in question is convicted of a criminal offence, and that conviction is not overturned following an appeal.

11. The indemnities shall continue in force for as long as the employee remains liable in law for the act or omission in question.

12. The indemnities shall not extend to any situation where it would be unlawful for the Council to give an indemnity to employees.

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Local Protocol – Relations between Overview and Scrutiny and the Cabinet

Contents

1. Introduction
2. Guiding Principles
3. Expectations of the Cabinet
4. Working together on the Development of Overview and Scrutiny Work Programme
5. Expectations of Overview and Scrutiny Members
6. Call-in
7. The Role of the Statutory Scrutiny Officer

1. Introduction

1.1 The function overview and scrutiny has in holding an authority's decision-makers to account, remains fundamentally important to local democracy. Effective, efficient and lawful decision-making by a local authority is crucial, and this Protocol has been developed having regard to the 'Overview and Scrutiny: statutory guidance for councils, combined authorities and combined county authorities' published on 22 April 2024 and reinforces the role that overview and scrutiny has in making such decisions.

1.2 This Protocol sets out relationships between Torbay Council's Cabinet and Overview and Scrutiny Board, its Sub-Boards and Review Panels. This includes the processes that these bodies will follow, where they will interact with each other, and how they expect the other to conduct themselves. The Protocol is in addition to requirements set out in the Council's Code of Conduct and the Member and Officer Local Protocol.

1.3 This Protocol promotes an effective role for Overview and Scrutiny and fosters a good working relationship between the Overview and Scrutiny bodies and the Cabinet which in turn provides a valuable contribution to the effective running of the Council.

1.4 There are different roles and responsibilities of Overview and Scrutiny and Cabinet Members, and an effective relationship includes (but is not limited to):

a. frequent and honest dialogue between Cabinet Members and Overview and Scrutiny Members, either individually or collectively; and

b. regular discussions regarding Cabinet and Overview and Scrutiny Work programmes/activities, including establishing joint activities/projects where possible (via the Council Leadership Group and Overview and Scrutiny Leadership quarterly meetings with the Leader of the Council, Group Leaders, Overview and Scrutiny Co-ordinator, Vice-chair of Overview and Scrutiny Board, Chair of Audit Committee, Director of Corporate Services and Democratic Services Team Leader).

2. Guiding Principles

2.1 The general role of the Overview and Scrutiny Bodies is set out in Article 5 – Overview and Scrutiny. However, the following principles set out how the working relationship between the Cabinet and the Overview and Scrutiny bodies will operate:

a. the Cabinet and Members of Overview and Scrutiny bodies recognise that they each have different functions and responsibilities that contribute to securing the best outcomes for the people who live and work in Torbay;

b. whilst the membership of Overview and Scrutiny bodies reflect the Council's political proportionality, their meetings should reflect the statutory guidance that scrutiny work be conducted in a non-party political manner;

c. all participants in the working relationship between Cabinet and Overview and Scrutiny will do so in a spirit of mutual respect, trust and courtesy, with constructive challenge; and

d. Cabinet recognises that the Overview and Scrutiny bodies have several rights, for example requiring Portfolio Holders to attend its meetings or calling-in Cabinet decisions which have not yet been implemented, should they consider a decision needs to be reviewed. The Overview and Scrutiny bodies will exercise those rights responsibly.

2.2 To facilitate this challenge the Overview and Scrutiny bodies will:

a. hold the Cabinet to account - this enables non-Cabinet Members to fully scrutinise important decisions made by the Cabinet whilst also allowing routine decision making to take place in a responsive manner. An important method to ensure accountability is through examining performance and decisions taken by the authority;

b. challenge the Cabinet about any decisions (key or non-key) which have been taken by Cabinet;

c. require and consider Key Performance Indicators and Budget Monitoring information; and

d. query or ask for information about any item on the Forward Plan, notice of forthcoming Key Decisions.

2.3 In addition to their rights as Councillors, Members of Overview and Scrutiny Boards/Sub-Boards and their working groups have additional rights of access to documents, in accordance with Access to Information Rules set out in the Council's Constitution and that provided for in Statutory Guidance.

3. Expectations of the Cabinet

3.1 It is expected that Cabinet Portfolio Holders will attend meetings of Overview and Scrutiny Board and Sub-Boards, when requested via the Clerk, on behalf of the Chair, to present reports relevant to their Portfolio and answer any relevant questions with support from their Director.

3.2 All Members will promote an atmosphere of openness at Overview and Scrutiny meetings and strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between Overview and Scrutiny Members, Cabinet Members and other participants.

3.3 Where the Overview and Scrutiny Board and Sub-Board has made recommendations to a decision-making body or person, that body or person will provide a written response to those recommendations setting out whether the recommendations are accepted or not, and the reasons for that decision. Note: for external organisations, they have to have regard to the recommendations and can be requested to provide a response but cannot be directed to provide a response.

4. Working together on the Development of the Scrutiny Work Programme

4.1 Individual Portfolio Holders and Overview and Scrutiny Chairs will consider meeting regularly to identify and plan for Policy development work in which all Members can participate.

4.2 The intention should be to programme such work at an early stage in the development of a Policy.

4.3 A monthly informal briefing will be held with all Members of the Overview and Scrutiny Board and Sub-Boards (open to all non-Cabinet Members) to give an opportunity for them to consider forthcoming key decisions. The relevant Board and Sub-Board shall identify any forthcoming key decisions which are relevant to the functions of that Board and Sub-Board that it may wish to scrutinise. New items added to the Overview and Scrutiny Work Programmes will be shared with the relevant Portfolio Holder and Director to assist them with their Work Planning.

4.4 When considering new topics for Overview and Scrutiny, Members will consider the following questions:

a. do we understand the benefits scrutiny would bring to this issue?

b. how can we best carry out the work on this subject?

c. what would be the best outcome for this work?

d. how would this work engage with the activity of the Cabinet and other decision-makers, including partners?

e. how does this contribute to delivery of the Council's Community and Corporate Plan.

4.5 The Chief Executive/Directors will discuss the parameters for scoping matters and any appropriate timescales for the matter to be reported to the Board and Sub-Board, taking into account any key milestones for decision making, including time needed to obtain any advice which is required.

5. Expectations of the Overview and Scrutiny Members

5.1 Overview and Scrutiny Board and Sub-Boards will provide constructive 'critical friend' challenge to the Cabinet's proposals and decisions.

5.2 Members of Overview and Scrutiny will remain non-political and be effectively led by non-Cabinet Members who take responsibility in their role to drive improvements for the benefit of the residents and visitors of Torbay.

5.3 The Cabinet's response to Overview Scrutiny's recommendations will be monitored to review their implementation and the effectiveness of Overview and Scrutiny.

6. Call-in

6.1 The Standing Orders – Overview and Scrutiny set out the process for Members to call in decisions of the Cabinet.

6.2 The following procedure shall take place at call-in meetings:

a. the Call-in Promoter who called in the decision should speak first to present their reasons for call-in, as set out in the submitted paper;

b. the Cabinet Member will provide a verbal response to the issues raised;

c. the Overview and Scrutiny Board will then discuss the issues raised and can then ask questions of the Portfolio Holder, Call-in Promoter or Call-in Supporter who may ask a relevant officer to supply further information if necessary; and

d. the Overview and Scrutiny Board will debate the issue and vote on the outcome.

7. The Role of the Statutory Scrutiny Officer

7.1 The Statutory Scrutiny Officer's role includes the promotion of the Council's Overview and Scrutiny function, providing support and guidance to Members and officers relating to the functions of Overview and Scrutiny and providing a link between the Cabinet and the Overview and Scrutiny Board, its Sub-Boards and Review Panels.

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Local Protocol – Good Governance the Torbay Way – Effective Administration and Opposition Leaders' Agreement and Principles

Contents

1. Introduction

2. Leaders' Agreement

3. Effective Administration and Opposition Principles

Torbay Council – Constitution Local Protocol – Good Governance the Torbay Way – Effective Administration and Opposition Leaders' Agreement and Principles

1. Introduction

1.1 The Council has operated within no overall control by a single political party since 2019 and most recently since December 2023. All Group Leaders recognise there will always be a need to work together to ensure the good governance of the Council, which is built on trust and for the best interests of the Council and the residents it serves, irrespective of the political make-up of the Council.

1.2 To enhance the good governance of the Council, the respective roles of Administration and Opposition need to be clearly understood, defined and supported and expressed in our constitutional arrangements.

1.3 The Group Leaders have worked together to co-create the changes required to both the Constitution and our ways of working to embed effective Administration and Opposition in our 'Torbay Way' for good governance. This Local Protocol sets out the resulting Group Leaders' Agreement and principles. The associated Constitution amendments were approved by the Council on 27 February 2025 (Good Governance Torbay Way - Effective Administration Opposition Agreement App 1.pdf) and have been incorporated throughout the Constitution.

1.4 The principles agreed by the Group Leaders', and the associated Constitution amendments which have been incorporated, bring the Group Leaders' Agreement into effect. The Constitution provides the basis for the Council's overarching governance arrangements and does not reflect the current political make-up of the Council as this may change at any time. However, the Constitutional changes made encompass the principles arising from the Leaders' Agreement as far as the Council's governance arrangements allow and without being timebound but provide the 'Torbay Way' for the Council's governance arrangements for effective administration and opposition working.

2. Leaders Agreement

2.1 As Group Leaders, we have worked together and with our respective Groups through a facilitation process. All Members recognise that the best interest of the Council and the residents it serves, is through the good governance of the Council which is built on trust.

2.2 To deliver good governance, the respective roles of the administration and the opposition need to be clearly understood and supported. In this regard all Members recognise the need for effective Shadow Cabinet arrangements and have worked together to co-create the required changes to the Constitution, to embed this as the 'Torbay Way.'

2.3 The 'Torbay Way' will provide for the following key roles for the opposition:

1. Overview and Scrutiny Co-ordinator; and
2. Chair of Audit Committee

2.4 It will also provide that Committee Vice-chair positions will be held by opposition members, who will work in partnership with the Chair, in advance of meetings.

2.5 The allocation of these roles for the opposition will allow them to be a truly resilient and effective opposition and allow the Administration of the Council to effectively

lead the organisation. It will be for the Administration to determine the allocation to all other positions.

2.6 Agreement

2.6.1 Effective Administration provides the leadership of the Council, is responsible for proposing the Council's budget and policy framework and for making major decisions within the budget and policy framework set by the Council. The Administration works through the Cabinet and includes the Leader of the Council. It is recognised that the appointment of the Civic Mayor and Deputy Civic Mayor sits with and is within the gift of the Administration.

1. Effective Opposition provides constructive challenge to the Administration and holds decision-makers to account. The Opposition works through Shadow Cabinet. The Opposition also holds the positions of Overview & Scrutiny Co-ordinator and Chair of Audit Committee.
2. It also means that where a member of the Administration chairs a Committee chairs a Committee the Vice-chair will be a member of the opposition, and vice versa.
3. The associated Constitution amendments (appended) set out in this Agreement bring into effect that agreed.

2.6.2 As Group Leaders of the three Political Groups on Torbay Council, we hereby confirm our agreement to all elements of this Agreement, its principles and associated Constitutional amendments which have been approved by Full Council on 27 February 2025.

2.6.3 Specifically, we confirm by agreement that the Political Groups will not put forward alternative nominations and as Group Leaders, we will seek to minimise any votes in opposition to the following positions:

1. the Administration's nominations for Civic Mayor and Deputy Civic Mayor (including Civic Mayor and Deputy Civic Mayor elect); and
2. the Oppositions nominations for:
    1. Overview and Scrutiny Co-ordinator; and
    2. Chair of Audit Committee

3. Effective Administration and Opposition – Principles

The following principles and changes have been using the Leaders's Agreement.

3.1 **Definition of Administration and Opposition**
The following Definition sets out the respective roles of Administration and Opposition:

3.1.1 The Administration of the Council provides the leadership of the Council, is responsible for proposing the Council's budget and policy framework and for making major decisions within the budget and policy framework set by the Council. The Administration works through the Cabinet and includes the Leader of the Council. As part of the Leaders' Agreement, it is recognised that the appointment of the Civic Mayor and Deputy Civic Mayor sits with and is within the gift of the Administration.

3.1.2 The Opposition of the Council provides constructive challenge to the Administration and holds decision-makers to account. The Opposition works through Shadow Cabinet. The Opposition also holds the positions of Overview & Scrutiny

Co-ordinator and Chair of Audit Committee. The Opposition will also hold Vice-chair positions on other Committees where the Administration holds the Chair positions.

3.2. Shadow Cabinet Arrangements

3.2.1 The Shadow Cabinet shall mirror the Leader of the Council's Cabinet, in terms of number and portfolios and is normally led by the Leader of the largest Opposition Political Group. The Shadow Cabinet provides the collective responsibility for providing an effective challenge to the Administration and constructive political opposition of the achievement of the Council's corporate and service objectives and priorities.

3.2.2 To strengthen the existing arrangements, the following will be introduced for the Shadow Cabinet:

- Mirrors the Cabinet size and portfolios;
- Includes a Shadow Cabinet Leader and Deputy;
- Enable members from other opposition groups to be appointed as Shadow Cabinet members by the Leader of the largest opposition group;
- Establish formal 1:1s between the Leader and Deputy Leader of the Council and Leader and Deputy Leader of the Shadow Cabinet;
- Regular Cabinet Members and Shadow Cabinet Members meeting;
- Recognise Shadow Cabinet Members as opposition spokespersons at Cabinet and Council meetings (where Shadow Cabinet Members are not seconding the Cabinet's proposals at Council meetings);
- Confidentiality shall be maintained on confidential matters shared;
- Strengthen and clarify support by Senior Officers, through 1:1s and meetings of Shadow Cabinet; and
- Effective cascade arrangements from Shadow Cabinet through their respective Group(s) and ward councillors, where appropriate, to ensure effective communication.

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3.3. Key Roles for Opposition

3.3.1 The Leaders' Agreement recognises that for effective opposition in holding the Administration to account, the following key roles will be held by the Opposition and where the political balance of the Council allows:

- Overview & Scrutiny Co-ordinator; and
- Chair of Audit Committee
-

3.3.2 Whilst holding the above positions, the requirements of the Council's approach to its statutory functions of overview and scrutiny and guiding principles (as set out in the Local Protocol for Overview & Scrutiny and Cabinet Relations) shall be maintained, namely: 'whilst the membership of Overview and Scrutiny bodies reflect the Council's political proportionality, their meetings should reflect the statutory guidance that scrutiny work be conducted in a non-party political manner'.

3.3.3 Where the Administration hold Committee Chair positions, the Opposition will hold the Vice-chair positions and vice versa.

3.3.4 The Vice-chairs shall work in partnership with the Chairs of Committees, attend any pre-briefings to shadow the Chairs on agenda preparation, which will ensure that information is shared, and they gain experience to create capacity building.

3.3.5 All other roles will be held by the Administration to determine their allocation.

3.4. Civic Mayor and Deputy Civic Mayor Appointment with Administration

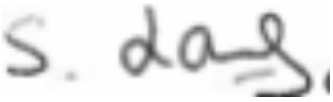
3.4.1 As stated above and as part of the Leaders' Agreement, it is recognised that the appointment of the Civic Mayor and Deputy Civic Mayor sits with and is within the gift of the Administration, to fulfil its leadership role of the Council. The Administration may determine to appoint a Civic Mayor and/or Deputy Civic Mayor from a Member of the Opposition group.

3.4.2 Within the Local Protocol on Civic and Ceremonial Mayor and the Deputy Civic Mayor, clarity has been provided for these roles and their consorts/escorts, in respect of their conduct at civic engagements to ensure and strengthen their political neutrality. In addition, the update provides clarity for the role of the Civic Mayor when exercising their right to vote at Council meetings.

3.4.3 This Agreement and associated principles were adopted by Council on 27 February 2025 and, on behalf of all Torbay Councillors, we as the Council's Political Group Leaders hereby sign this statement to demonstrate our joint commitment to uphold good governance for effective administration and opposition working within Torbay Council:

Councillor David Thomas	**Councillor Swithin Long**	**Councillor Darren Cowell**
Leader Conservative Group	Leader Liberal Democrat Group	Leader Independent Group







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Members' Allowances Scheme

Torbay Council has made the following scheme for the payment of allowances to Members from 1 April 2026, in accordance with the Local Authorities (Members' Allowances) Regulations 2003.

1. In this scheme:

"Councillor" means an elected Member of Torbay Council;

"Co-opted Member" means the following:

(a) Statutory co-optees (diocesan authority and parent governor representatives).

Basic Allowance

2. Subject to paragraph 10, an annual Basic Allowance (BA) will be paid to each Councillor. For the year commencing 1 April 2026 the Basic Allowance is £10,951.59. This is intended to recognise the time commitment of Councillors on constituency duties and attending meetings and travel on non-approved duties etc; dealing with correspondence; and costs relating to the use of the Councillors' home such as telephone charges, broadband, stationery, postage and office equipment.

Special Responsibility Allowances

3. (a) Subject to paragraph 10, an annual Special Responsibility Allowance (SRA), will be paid in addition to the Basic Allowance to those Councillors who hold the special responsibilities listed below. The SRA is paid to recognise the additional commitment and time required to fulfil each role and covers subsistence and travel for attending meetings not listed in Schedule 1.

Leader of the Council	£27,380.58
Deputy Leader of the Council	£16,427.92
Cabinet Members:	
□ Collective decision making	£14,238.24
Overview and Scrutiny Co-ordinator	£8,761.91
Scrutiny Lead Members who Chair Sub-Boards	£6,571.17
Scrutiny Lead Members who Chair ad hoc Task and Finish	£4,380.42
Chair of **Planning Committee**	£8,761.91
Chair of **Regulatory Licensing Committee**	£4,380.42
Chair of **Regulatory Licensing Sub-Committees:**	
□ 10+ meetings	£1,423.18
□ 5-9 meetings	£766.49
Chair of **Statutory Licensing Committee**	£4,380.42
Chair of **Statutory Licensing Sub-Committees:**	
□ 10+ meetings	£1,423.18
□ 5-9 meetings	£766.49
Civic Mayor	£4,380.42
Chair of **Harbour Committee**	£4,380.42
Chair of **Audit Committee**	£4,380.42
Chair of **Health and Wellbeing Board**	£4,380.42
Leaders of Political Groups: (an allowance per member excluding the Group Leader)	£438.15

(b) No councillor will be entitled to receive more than one Special Responsibility Allowance.

Co-optees' Allowance

4. Subject to paragraph 10, an annual Co-optees' allowance of £154.58 shall be paid to each Co-opted Member (to include expenses for travel and subsistence).

Independent Person for Audit Committee Allowance

5. An allowance of up to £1,103.37 per annum shall be offered as renumeration to the Independent Person for the Audit Committee.

Civic Allowances

6. The Council has chosen to pay a Civic Allowance for each Municipal Year (which is outside of the Members' Allowances Scheme) to the Chair of the Council to assist them in carrying out their civic and ceremonial role. This is in addition to the SRA received by the Chair of the Council.

Individual's Acceptance of Allowances

7. A Councillor or a Co-opted Member may choose to not accept all or part of his or her entitlement to an allowance under this Scheme by giving written notice to the Head of Governance Support.

Part-year Entitlements

8. Councillors and Co-opted Members will be paid for the period they serve and if this is less than a whole year payments will be made on a pro-rota basis on the number of days applicable. This also applies to those holding positions of special responsibility and if the Scheme is amended during the year.

9. In the year of a local election the Chair of the Council will continue to receive their SRA and Civic Allowances up to the day of the Annual Council meeting. This includes where they are not re-elected.

Tax and National Insurance Contributions

10. The Basic Allowance and any Special Responsibility Allowances are subject to Tax and National Insurance contributions by the PAYE process operated by the Council and these allowances will be paid automatically to Councillors in twelve monthly instalments. Co-optees Allowances are also subject to Tax and National Insurance contributions and are also paid in twelve monthly instalments.

Suspension

11. Where a Councillor is suspended or partially suspended their Basic and/or Special Responsibility Allowance and any other allowances they would normally be entitled to will be stopped for the period of the suspension.

Travelling and Subsistence Allowances

12. Councillors and Co-opted Members may claim Travelling and Subsistence Allowances for approved duties listed in Schedule 1 at the rates set out in Schedule 2. These are not subject to tax. Prior written approval should be obtained from the Head of Governance Support for travel abroad or first class travel.

Childcare and Dependent Carers' Allowance

13. (a) An Allowance equal to the cost incurred may be claimed when a carer has been engaged to enable a Councillor or a Co-opted Member to carry out an approved duty listed in Schedule 1.

(b) The Allowance will cover paid care for the following who live with the claimant:-

- children aged 15 years and under;
- elderly relative requiring constant care;
- disabled relative requiring constant care; or
- relative with learning disabilities requiring constant care.

(c) The paid carer cannot be a member of the immediate family or household.

(d) As per HMRC regulations, no tax relief is due for the cost of a carer and any claim will be subject to tax.

Duties which fall outside the Scheme

14. The Head of Governance Support is authorised to approve Travel and Subsistence and Childcare and Dependent Carer's Allowances for duties that technically fall outside the scheme (provided, that in the case of childcare and dependent carer's allowances, they meet the requirements of 12 above) where he/she is satisfied that the expenses incurred are essential to the proper conduct of Council-related business.

Up-rating of Allowances

15. The Basic Allowance, Special Responsibility Allowances and Co-optee's Allowances will be indexed, on the 1 April each year from 2024, to the percentage of the average of the staff pay increase (to be calculated annually by the Director of Finance) following the annual local government pay percentage increase as agreed by the National Joint Committee for Local Government Services.

The Travel and Subsistence Allowances will be up-rated as and when the officers' scheme is adjusted, subject to the requirement in the Regulations for this index to

apply for no longer than four years without a further review of the Allowances Scheme by an Independent Remuneration Panel.

Claims and Payments

16. A claim for a Travel and Subsistence Allowance and a Childcare and Dependent Carers' Allowance under this Scheme must be made in writing or the Council's MyView system within **three months** of the date of the meeting and must be supported by appropriate receipts.

17. Claims must be submitted to the Governance Support Team by 1st of the month (or the next working day if the 1st falls on a weekend or bank holiday). Payments will be made on 25th of each month by BACS.

18. All questions about the interpretation and application of any of the allowances should be emailed to the Chief Executive.

Parking Permit

19. Members have the option to purchase either an annual car parking permit at £100 to include all Council owned car parks or to pay to park on an ad-hoc basis in line with the charges applicable to staff.

Members' Pensions

20. Members shall have the option to join the Local Government Pension Scheme (LGPS) with effect from 11 May 2026, in accordance with the LGPS (Amendment) (Elected Member Pensions) Regulation 2026 ("the Regulations") and national guidance.

21. Participation in the LGPS shall be voluntary. A Member may elect to join or leave the Scheme at any time, subjects to the Scheme rules.

22. Where a Member elects to join the Scheme, pension contributions shall be deducted from the Member's Basic Allowance and any Special Responsibility Allowances (SRA) they receive. The Civic Mayor Personal Allowance shall be excluded from pensionable earnings, and no pension contributions will be deducted from this Allowance as this is to cover Civic expenses. The Council shall pay the contributions required under "the Regulations".

23. Contributions shall be calculated based on the Basic Allowance and any pensionable SRA and shall be paid at the rates set by the LGPS and relevant legislation. All contributions will be administered through the Council's payroll processes.

24. Information about eligibility, contribution rates and how to join or leave the Scheme shall be provided to all Members in writing (via email).

Schedule 1

The following duties are recognised as approved duties for the payment of Travel and Subsistence Allowances and Childcare and Dependent Carers' Allowances.

(i) attendance at meetings as a duly appointed Member of:

(a) the Council and any Committee of the Council;
(b) any Sub-Committee appointed by a Committee;
(c) the Cabinet or Committee of the Cabinet (if appointed);
(d) Working Parties (including the Member Development Group and Leadership Group);
(e) Scrutiny Review Panels;
(f) Policy Development Groups;
(g) any outside organisation and their sub-groups appointed by the Council or the Cabinet, provided that the organisation does not pay any such expenses (these are listed on each Councillor's details page on the Council's website at www.torbay.gov.uk/DemocraticServices/mgMemberIndex);

(ii) Members in receipt of an SRA where that Member is representing the Council at a formal external meeting in that capacity, including any acting as an approved substitute as notified by the relevant Group Leader to the Head of Governance Support in advance of the meeting;

(iii) attendance at internal Cabinet/Senior Officer meetings (Cabinet and Directors' meeting (CAD));

(iv) attendance at internal cross party governance meetings with Councillors and Senior Officers, for example, Leaders Meeting;

(v) attendance at Local Government Association Boards (for Torbay Councillors) who are Members of those Boards but not appointed by Torbay Council;

(vi) attendance at site visits for planning or licensing purposes or as part of overview and scrutiny by Committee/Board Members;

(vii) attendance at Member development sessions;

(viii) attendance at seminars and all Member briefings organised by Torbay Council, except for those held immediately prior to a meeting of Council;

(ix) attendance at non-political conferences/seminars, subject to prior approval by the relevant Group Leader and Head of Governance Support and funding for the conference being available (in accordance with the Local Protocol for the Leader of the Council and Political Groups); and

(x) Members who are not the appointed Member of the bodies listed below are able to claim mileage and carers' allowance (excluding subsistence allowance) for attendance in person at meetings of the following (with effect from 1 January 2024):

a) the Council and any Committee of the Council;
b) any Sub-Committee appointed by a Committee;
c) the Cabinet or Committee of the Cabinet (if appointed);
d) Working Parties; and
e) Scrutiny Review Panels.

Schedule 2

Travelling and Subsistence Allowances

The following travelling allowance may be claimed with effect from 1st April 2003 (the date the rates came into force) and rates for travel will be the same as those set out in the Torbay Council Expenses Policy for those duties listed in Schedule 1:

Travelling Allowances

(a) Motor Cars – 45p per mile

(b) Electric Car – 40p per mile

(c) Motor Cycles - 40p per mile

(c) Bicycles - 40p per mile

(d) Taxi - Councillors and Co-opted Members may claim taxi fares provided that the journey is necessary to undertake an approved duty of the Council and where no public transport is reasonably available.

A Member may claim a maximum of 40 miles for a round trip for attending approved duties within Torbay. However, where a Member is temporarily residing outside of Torbay and is required to attend an approved duty in Torbay, they will be able to claim the travel allowance from their temporary residence on a one-off ad hoc basis with the prior agreement of the Head of Governance Support (such travel should be by the most cost effective means).

Notes: For all journeys, Councillors and Co-opted Members will be expected to use the most appropriate means of transport possible. This includes public transport. For travel outside Torbay, Councillors and Co-opted Members should agree in advance with the Head of Governance Support whether travel by car, train or other public transport is appropriate before any journey is undertaken.

All claims for travel on public transport must be accompanied by a receipt.

All claims for travel by car or motor cycle must be accompanied by a VAT fuel receipt which must be for at least one-third of the total amount of the claim. One receipt may be used for more than one journey provided it covers at least one-third of the total amount claimed. This is to enable the Council to reclaim the VAT on the fuel element of the mileage claims.

Subsistence

The following subsistence allowances may be claimed with effect from June 2023 for those duties listed in Schedule 1:

(i) **Breakfast** allowance (departure from home before 8.00 a.m.).....**£7.06**
(ii) **Lunch** allowance (absent from normal place of work during 12.00 noon and 2.00 p.m.) **£9.72**
(iii) **Evening** meal allowance (not home before 6.00 p.m.).....**£13.44**

Notes: Subsistence rates for Councillors and Co-opted Members are calculated on a meals basis dependent on the time of day the meal would be taken and the time away from home.

All claims for subsistence must be accompanied by a receipt. The maximum allowance will only be paid where the cost of the subsistence is equal to, or greater than, the maximum amount.
Where subsistence is provided by the Council or event organiser, subsistence claims will not be paid, even where a Member declines to accept the subsistence provided and makes their own provision.

Other expenses

The actual amount incurred on any tolls, ferries or parking fees shall be reimbursed. All claims for such expenses must be accompanied by a receipt.

In the case of an absence overnight from their usual place of residence, Councillors and Co-opted Members may be entitled to claim reasonable expenses by agreement in advance with the Head of Governance Support.

Job Descriptions

Job title: Elected Member (to apply to all members)

Responsible to: Torbay Council and the local people

Role purpose: To represent the views of his/her local community within and outside the Council.

Main Duties and Responsibilities

1. To represent the individual constituents within their Wards , undertaking casework on their behalf and serving all equally.

2. To liaise with the Leader of the Council, Cabinet members, other council members, officers and other service providers in ensuring that local community needs are considered and identified.

3. To be a channel of communication for the local communities about the decisions of Council and Council procedures.

4. Acting as community leader, to represent the views, aspirations and concerns of the people of Torbay as a whole, providing the focus for local democracy.

5. To participate in Council meetings to carry out the functions of Council meetings as set out in Article 4 of the Constitution.

6. To participate as a member of the Cabinet, committee, advisory panel or other body to which the member is appointed.

7. If appointed, to represent the Council on outside organisations.

8. To develop and maintain a working knowledge of the Council's services, management arrangements, powers/duties and constraints and to develop good working relationships with the relevant officers of the Council.

9. To develop and maintain a good knowledge of the corporate polices of the Council.

10. To uphold the Council's Constitution and to promote high ethical standards. To act in accordance with the Members' Code of Conduct and the Protocols as set out in the Council's Constitution.

11. To establish and maintain effective working relations with other members (including independent members and those who are members of different political groups).

12. To promote and enhance the Council's reputation through participating constructively in the governance of Torbay.

13. To undertake in a constructive manner such training and development as the Council, the Standards Committee or the member's own group (if applicable) may recommend from time to time and to disseminate learning from attendance at conferences with their colleagues where appropriate, including feedback to all members.

14. To be aware and understand his/her duties as a corporate parent and act to promote positive outcomes for all children looked after by Torbay Council.

15. To ensure that relevant health and safety responsibilities are taken into account when undertaking all aspects of the role.

Job Description

Job title: The Leader of the Council

Responsible to: Torbay Council and local people.

Role purpose: To represent the aspirations of the people of Torbay and to provide overall strategic leadership to the Council.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To appoint the Cabinet and Deputy Leader.

2. To manage and lead the work of the Cabinet including deciding the scheme of delegation for Cabinet functions.

3. To lead on decision making and to make individual decisions in relation to Cabinet functions.

4. To work closely with other Cabinet members to ensure the development of effective Council policies, and the delivery of high quality services (reflecting the principles of Best Value) to local people.

5. To represent the Council on the Torbay Together Partnership and on such other outside organisations he/she is appointed.

6. To lead the Cabinet's work in:

   (a) providing strategic direction to the Council by identifying a vision, corporate objectives and priorities for services;

   (b) providing a lead on the development of corporate policies and strategies;

   (c) using the Council's objectives and priorities to drive the development of services and budget process;

   (d) seeing continuous improvement by establishing the appropriate culture within the Council and associated systems;

   (e) monitoring performance;

   (f) ensuring probity and financial monitoring;

   (g) keeping under review the organisation and management processes of the Council, including the democratic structures; and

   (h) developing, in consultation and partnership with others, a strategy for providing the social, economic and environmental well-being of the Borough of Torbay.

7. In consultation, with the Chief Executive, draw up a forward plan of Cabinet business and to keep it under review.

8. To represent the Council at events which relate to the promotion of the business of the Council or Torbay.

9. To act as an ambassador for the Council:

   (a) promoting its work and acting as its principal political spokesperson;

   (b) participating in consultation;

   (c) listening to, and taking account of, the views of organisations, the public and businesses; and

   (d) representing the Council at all appropriate levels.

10. To appear before the Overview and Scrutiny Board, its sub-committees or any working parties of the Board.

11. To liaise with the Chief Executive on a regular basis in relation to the strategic vision and direction of the Council, the management roles of officers and the development of policy issues.

12. To liaise with the Group Leaders to ensure the effective and proper management of the Council's business in the best interests of local people.

13. To assist in the delivery of training and development as identify within the Members' Development Programme.

14. So far as it is an Executive function, to make (or delegate the making of) appointments to outside organisations.

15. To use his/her best endeavours to work constructively with the Group Leaders to ensure that the Council sets a lawful budget and adopts (and keeps under review) an appropriate policy framework.

Job Description

Job title: Deputy Leader

Responsible to: Torbay Council and local people.

Role purpose: To deputise for the Leader of the Council and to be the Council's main representative and spokesperson on their nominated areas of responsibility.

Main Duties and Responsibilities – ***in addition to those duties of all elected members***

1. To deputise for the Leader of the Council, in his/her absence, but excluding any roles in relation to civic and ceremonial functions.

2. To represent the Leader of the Council, as required (but excluding any roles in relation to civic and ceremonial functions).

3. To support and assist the Leader of the Council in managing and leading the work of the Cabinet.

4. To participate in the Cabinet in respect of all areas of collective decision-making with particular emphasis on any areas for which he/she has been given a particular responsibility by the Leader of the Council.

5. To act as the spokesperson and advocate for the Council in respect of any areas of responsibility assigned to them by the Leader of the Council.

6. To lead the development of the Council's policy framework within his/her area of responsibility and make recommendations to the Council.

7. To provide guidance to the Leader of the Council on the management and implementation of functions in relation to activities within his/her area of responsibility.

8. To give guidance to the Leader of the Council on budget priorities within his/her area of responsibility.

9. To monitor through appropriate officers the Council's performance within his/her area of responsibility.

10. To respond to reports of the Overview and Scrutiny Board, its sub-committees or any working parties of the Board.

11. To appear before the Overview and Scrutiny Board, its sub-committees or any working parties of the Board.

12. To lead the process of continuous improvement and responsiveness of Council services within his/her area of responsibility.

13. To ensure that activities within his/her area of responsibility take proper account of the Council's vision, core values and guiding principles.

14. To represent the Council politically at national and local level, on outside organisations or in partnership with other agencies.

Job Description

Job title: Group Leader

Responsible to: Torbay Council and local people.

Role purpose: To lead his/her political group and contribute to the effective and proper management of Council business

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To lead his/her political group in accordance with the law and the internal rules and procedures of that group.

2. To lead or facilitate the development of clear strategic priorities for his/her group and (if required) communicate these to the Chief Executive.

3. To use best endeavours to liaise with the Leader of the Council, the leaders of other political groups and the Chief Executive to ensure the effective and proper management of Council business.

4. To use best endeavours to work constructively with the Leader of the Council and other Group Leaders to ensure that the Council sets a lawful budget and adopts (and keeps under review) an appropriate policy framework.

5. By example (and by using all lawful powers available as group leader) to promote high ethical standards amongst the members of his/her political group and adherence to the Council's Protocols.

6. By example (and by using all lawful powers available as group leader) to encourage the members of his/her political group to participate constructively in such training as the Council or the Standards Committee may recommend from time to time. To include assisting in the delivery of training and development as identify within the Members' Development Programme

7. To use best endeavours to resolve disputes between any member of his/her group with any other member (of any or no political group) or any officer in accordance with the Council's Codes and Protocols.

Job Description

Job title: Cabinet Member

Responsible to: Torbay Council and local people.

Role purpose: To be the Council's main representative and spokesperson on their nominated areas of responsibility as appointed by the Leader of the Council.

Links to Members' Skills Framework: Cabinet Member

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To participate in the Cabinet in respect of all areas of collective decision-making with particular emphasis on any areas for which he/she has been given a particular responsibility by the Leader of the Council.

2. If required, to deputise for the Leader of the Council and/or Deputy Leader.

3. To act as the spokesperson and advocate for the Council in respect of any areas of responsibility assigned to them by the Leader of the Council.

4. To lead the development of the Council's policy framework within their areas of responsibility and make recommendations to the Leader of the Council.

5. To provide guidance to the Leader of the Council on the management and implementation of functions in relation to activities within their areas of responsibility.

6. To give guidance to the Leader of the Council on budget priorities within their areas of responsibility.

7. To monitor through appropriate officers the Council's performance within their areas of responsibility.

8. To respond to reports of the Overview and Scrutiny Board, its sub-committees or any working parties of the Board.

9. To appear before the Overview and Scrutiny Board, its sub-committees or any working parties of the Board.

10. To lead the process of continuous improvement and responsiveness of Council services within their areas of responsibility.

11. To ensure that activities within their areas of responsibility take proper account of the Council's vision, core values and guiding principles.

12. To represent the Council politically at national and local level, on outside organisations or in partnership with other agencies.

Job Description

Job title: Civic Mayor

Responsible to: Torbay Council and the local people

Role purpose: To chair meetings of the Council and carry out such traditional and civic and ceremonial duties of the Council as requested by the Leader of the Council.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

Chairing the Council meeting

1. To uphold and promote the purposes of the Constitution and in particular the Local Protocol for Civic and Ceremonial.

2. 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.

3. 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 Cabinet are able to hold the Cabinet to account.

4. To promote public involvement in the Council's activities.

Civic Role

5. To be the first citizen of the Borough and to take precedence as he/she deems appropriate and undertake such civic and ceremonial duties as he/she considers appropriate. (Note: the Deputy Civic Mayor or an appropriate ward or other Member shall act as the Civic Mayor's deputy in relation to civic and ceremonial functions at the Civic Mayor's request. The Leader of the Council (where invited by the event organiser) will also attend those civic and ceremonial events which promote the business of the Council and the Bay.) To conduct themselves such a manner as prescribed in the Local Protocol for Civic and Ceremonial when undertaking civic and ceremonial duties.

Deputy Civic Mayor

The Deputy Civic Mayor shall undertake the role and functions of the Civic Mayor in his/her absence or at his/her request.

(Note: The Civic Mayor shall not be a member of any committee, sub-committee or working party)

Job Description

Job title: Overview and Scrutiny Co-ordinator

Responsible to: Torbay Council and local people

Purpose of role: To co-ordinate and take a lead role in the effective overview and scrutiny of policies, budget, strategies, and service delivery within Torbay with a view to ensuring public accountability and continuous improvement.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To Chair meetings of the Overview and Scrutiny Board, having particular regard to the Council's Overview and Scrutiny Standing Orders.

2. To ensure the work of the Overview and Scrutiny Board (and any sub-committees and working parties it establishes) is conducted at all times in a positive, balanced, independent and non-partisan manner, and in the best interests of local people.

3. To ensure Overview and Scrutiny is an open, transparent process that informs, consults, and engages with local people, particularly traditionally excluded groups.

4. To establish a critical friend relationship with the Leader of the Council, Cabinet members, senior officers, and key partners.

5. To lead the development and delivery of an annual overview and scrutiny work programme.

6. To ensure the effective operation of an overview and scrutiny function that:
   (a) examines and reviews decisions made by, and the performance of, the Leader of the Council, members of the Cabinet, other appropriate committees, officers, and the Council's partners;
   (b) questions the Leader of the Council, members of the Cabinet, other appropriate committees, senior officers, and partner organisations about their decisions and performance;
   (c) assists in policy development and proposes evidence-based recommendations to relevant decision-makers;
   (d) assists, examines, and challenges the formulation of the Council's annual budget, and ensures the budget setting process is efficient and transparent and that outcomes accord with the Council's plans and priorities;
   (e) reviews the performance of partnerships and other public bodies in the area, including requesting them to address the Overview and Scrutiny Board, its sub-committees, or any working parties; and
   (f) ensures adequate scrutiny of external reports on the Council's performance and that of its partners.

7. To be fully aware of the Council's Forward Plan and ensure that overview and scrutiny is able to consider all relevant issues within the timescale set.

8. To ensure that the call-in process is managed by the Overview and Scrutiny Board.

9. To be responsible for the constitutional arrangements relating to the waiving of call-in where decisions are urgent.

10. To consult relevant decision makers in the preparation of overview and scrutiny reports and influence them to implement recommendations.

11. To ensure findings of overview and scrutiny are communicated to the Council, the Leader of the Council, partners, the press, and public as appropriate.

12. To ensure the Overview and Scrutiny Board reports annually to Council on the workings of overview and scrutiny at Torbay.

13. To represent Torbay at regional and national forums concerned with overview and scrutiny.

14. To ensure the implementation of overview and scrutiny recommendations is monitored.

15. To arrange and attend such meetings of the Overview and Scrutiny Board (and any sub-committees and working parties it establishes) as may be necessary for the effective and efficient operation of the overview and scrutiny function.

16. To liaise with Scrutiny Leads to help ensure effective co-ordination of the overview and scrutiny function.

17. To support and motivate members in the overview and scrutiny process.

18. To develop and maintain a working knowledge of the practices, procedures, services, and functions that fall within the Overview and Scrutiny Board's terms of reference.

19. To have an understanding and be aware of legislation that impacts on the Council.

20. To ensure overview and scrutiny have regard to overview and scrutiny good practice e.g. promoted by the Centre for Public Scrutiny.

21. To ensure member champions are invited to be contributors to any reviews that have a direct bearing on their interest, have an opportunity to contribute or comment on the overview and scrutiny work programme, and are engaged and consulted appropriately in the development of policy.

23. To keep the Deputy Overview and Scrutiny Co-ordinator and Scrutiny Leads briefed adequately on all relevant issues.

Job Description

Job title: Deputy Overview and Scrutiny Co-ordinator (Vice-chair of the Overview and Scrutiny Board)

Responsible to: Torbay Council and local people

Role purpose: To assist, support, and deputise for the Overview and Scrutiny Co-ordinator.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. In the absence of the Overview and Scrutiny Co-ordinator, to Chair meetings of the Overview and Scrutiny Board, having particular regard to the Council's Overview and Scrutiny Standing Orders.

2. To assist and support the Overview and Scrutiny Co-ordinator in the delivery of his/her duties – as outlined the Overview and Scrutiny Co-ordinator's job description above.

3. To attend, and in the absence of the Scrutiny Co-ordinator arrange, such meetings of the Overview and Scrutiny Board (and any sub-committees and working parties it establishes) as may be necessary for the effective and efficient operation of the overview and scrutiny function.

4. To take responsibility for and to lead on specific issues which are within the remit of the Overview and Scrutiny Board but not necessarily in the remit of a Scrutiny Lead Member, as delegated by the Overview and Scrutiny Co-ordinator.

5. To develop and maintain a working knowledge of the practices, procedures, services and functions that fall within the Overview and Scrutiny Board's term of reference.

6. To have an understanding and be aware of legislation that impacts on the Council.

Job Description

Job Title: Overview and Scrutiny Lead

Responsible to: Torbay Council and local people

Role purpose: To lead the effective overview and scrutiny of policies, budget strategies, and service delivery within the area(s) for which they have particular responsibility as Scrutiny Lead.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To chair meetings of overview and scrutiny sub committees and working parties in the areas for which they have particular responsibility as Scrutiny Lead, having particular regard to the Council's Overview and Scrutiny Standing Orders.

2. To ensure the work of the Overview and Scrutiny Board (and any Sub-Committees and Working Parties it establishes) is at all times conducted in a positive, balanced, independent and non-partisan manner and in the best interests of local people.

3. To ensure overview and scrutiny is an open, transparent process that informs, consults and engages with local people, particularly traditionally excluded groups.

4. To take overview and scrutiny into the locality and community as appropriate.

5. To support the Overview and Scrutiny Co-ordinator in the development and delivery of an annual overview and scrutiny work programme, especially in the area(s) for which they have particular responsibility as Scrutiny Lead.

6. To establish a critical friend relationship with appropriate Cabinet members, senior officers and key partners.

7. To support the Overview and Scrutiny Co-ordinator, especially in the areas for which they have particular responsibility as Scrutiny Lead, in ensuring the effective operation of an overview and scrutiny function that:

    (a) examines and reviews decisions made by, and the performance of, the Leader of the Council, members of the Cabinet, other appropriate committees, officers and the Council's partners;

    (b) questions the Leader of the Council, members of the Cabinet, other appropriate committees, senior officers and partner organisations about their decisions and performance;

    (c) assists in policy development and proposes evidence-based recommendations to relevant decision-makers;

    (d) assists, examines and challenges the development of the Council's annual budget and ensures the process is efficient and transparent and that outcomes accord with the Council's plans and priorities;

(e) reviews the performance of partnerships and other public bodies in the area, including requesting them to address the Overview and Scrutiny Board, its sub-committees, or any working; and

(f) ensures adequate scrutiny of external reports on the Council's performance and that of its partners.

8. To be fully aware of the Council's Forward Plan, especially in the areas for which they have particular responsibility as Scrutiny Lead.

9. To keep under review and call-in as appropriate, decisions or actions taken, especially in the area(s) for which they have particular responsibility as Scrutiny Lead.

10. To consult relevant decision makers in the preparation of overview and scrutiny reports and influence then to implement recommendations.

11. To communicate the findings of overview and scrutiny reviews to the Council, the Leader of the Council, partners, the press and public as appropriate.

12. To lead in monitoring the implementation of overview and scrutiny recommendations in areas for which they particular responsibility.

13. To attend such meetings of the Overview and Scrutiny Board (and any sub-committees and working parties it establishes) as may be necessary for the effective and efficient operation of the overview and scrutiny function.

14. To take responsibility for and to lead on overview and scrutiny in-depth reviews in areas for which they have particular responsibility as Scrutiny Lead, including the arrangement of such meetings as may be necessary for the effective and efficient operation of such reviews.

15. To support and motivate members to contribute actively to the Overview and Scrutiny process.

16. To develop and maintain a working knowledge of the practices, procedures, services and functions that fall within the Overview and Scrutiny Board's terms of reference, especially in the areas for which they have particular responsibility as Scrutiny Lead.

17. To ensure members champions are invited to contribute to relevant overview and scrutiny reviews.

18. To have an understanding and be aware of legislation that impacts on the Council, especially in the areas for which they have particular responsibility as Scrutiny Lead.

Job Description

Job title: Chair of a Regulatory Committee

Responsible to: Torbay Council and the local people

Role purpose: To ensure that the regulatory responsibilities of the Council are undertaken in accordance with the Council's policies and procedures.

Main Duties and Responsibilities – *in addition to those duties of all elected members*

1. To chair meetings of one of the regulatory committees in accordance with the relevant terms of reference and the Council's Standing Orders and Constitution.

2. To assist the Chief Executive in selecting agenda items for committee meetings.

3. To consider the submission of late items and to determine whether or not these are sufficiently urgent to be considered by the Committee.

4. To arrange proper consideration of the issues presented to the Committee and ensure that it has all the necessary information before it to make informed decisions.

5. If appropriate, to represent the Council in all dealings with the public, media and other bodies in respect of regulatory matters.

6. To maintain awareness of national and local issues and regulations relating to the particular Committee.

7. To liaise with officers as to the training and development requirements for committee members.

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