

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.
- (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.