

Friday, 29 April 2022

STANDARDS HEARING SUB-COMMITTEE

A meeting of **Standards Hearing Sub-Committee** will be held on

Tuesday, 10 May 2022

commencing at **10.00 am**

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

Members of the Committee

Councillor Atiya-Alla
Councillor Barbara Lewis

Councillor Mills

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

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

STANDARDS HEARING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**

To elect a Chairman/woman for the meeting.

2. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

3. **Declarations of interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

4. **Allegation of a Breach of the Member Code of Conduct**

(Pages 3 - 22)

To consider a report and determine what action, if any, should be taken in respect of allegations made against a Member of Torbay Council in accordance with the Local Protocol for Assessment and Determination of Allegations of Breaches of the Members Code of Conduct.

In doing so the Standards Hearing Sub-Committee will consider the following:

- a) Preliminary Procedural Issues;
- b) Any significant disagreements about the findings of fact contained within the Investigators Report;
- c) Whether the Subject Member has failed to follow the Members Code of Conduct and what if any sanctions are appropriate where there is a finding.

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C A Jones & Associates Ltd

Torbay Council

Investigation

Report

Complaints against Councillor Hazel Foster

April 2022

Investigation Report

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Torbay Council

Complaints against Councillor Hazel Foster

1. Introduction

1.1. I was appointed by Amanda Barlow, in her capacity as Monitoring Officer for Torbay Council, to investigate complaints made against Councillor Hazel Foster.

There were 2 complaints covering the same incident, the first made by 6 Torbay Councillors and the second being made by an officer of Torbay Council.

1.2. The complainants are the following:

Councillor Margaret Douglas-Dunbar
Councillor Karen Kennedy
Councillor Cat Johns
Councillor Christine Carter
Councillor Cordelia Law
Councillor Swithin Long
Kevin Mowat – Director of Place

All officers and Members contacted as part of the investigation fully cooperated and their assistance is greatly appreciated.

1.3. The Complaint

1.3.1. The complaint pack which was submitted jointly by the above-named councillors relate to the conduct of Councillor Foster whilst chairing the meeting of Torbay's Housing Crisis Review Panel on 27th September 2021. The complainants have quoted directly from Torbay's Code of Conduct and have identified the following sections of the constitution within their complaint:

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4.2 General Conduct:

You must:

(a) treat others with respect

(c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.

4.3 As a Member: You must not:

(a) bully or harass a 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

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council:

(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.

(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.

1.3.2. The complaint submitted by Kevin Mowat, covered the same meeting as that identified and highlighted the following extracts from the Code of Conduct:

4.2 General Conduct: You must:

(a) treat others with respect

4.3 As a Member: You must not:

(a) bully or harass any person.

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council

1.3.3. On the 26th October 2021, The Monitoring Officer wrote to Councillor Foster, outlining the details of both complaints.

2. Summary of Findings

Both the complaint from the Councillors and from Kevin Mowat outline similar views on the conduct of Councillor Foster.

In order to summarise my findings, I have therefore used the areas of the constitution which were identified within the complaint received from the 6 Councillors. My findings in relation to sections identified are as follows: .

2.1. In relation to the allegations listed at 1.3.1 (and covering 1.3.2):

2.1.1. I find evidence of **Councillor Foster having breached the Code** in relation to: 4.2 You must:

(a) treat others with respect

2.1.2. I find evidence of **Councillor Foster having breached the Code** in relation to: 4.2 You must:

(c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.

2.1.3. I find evidence of **Councillor Foster having breached the Code** in relation to: 4.3 You must not:

(a) bully or harass a person

2.1.4. I find evidence of **Councillor Foster having breached the Code** in relation to: 4.3 You must not

(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

2.1.5. I have **not found sufficient evidence** of Councillor Foster having breached the Code in relation to: 4.3 You must not

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council

2.1.6. I have **not found sufficient evidence** of Councillor Foster having breached the Code in relation to: 4.3 You must not

(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

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use is in accordance with the Council's reasonable requirements and in accordance with its Policies.

2.1.7. I find evidence of **Councillor Foster having breached the Code** in relation to: 4.3 You must not

(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

3. Context and Key Considerations

3.1. *Under section 27(2) of the Localism Act 2011 a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity". Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person's membership of their authority and specifically their role as a councillor is needed. Some activities clearly have no link with the Council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the Council. Councillors must actually be engaged on Council business or commenting on Council business or acting as a representative of the Authority to be deemed "within capacity". The first point to be established therefore is whether Cllr Foster was acting in capacity at the time of the incident*

3.2. On the evening of 27th September 2021 Councillor Foster chaired the meeting of Torbay's Housing Crisis Review Panel. There is no question as to whether Councillor Foster was acting in the capacity of a Councillor and the focus of this report is therefore on the matter of conduct during this meeting.

The meeting was live streamed via Zoom and a copy of the recording of the meeting was made available by Torbay Council, in order to assist the investigation.

Although as part of the investigation process a number of Councillors and Officers have been interviewed (details provided at section 4 of this report), the main evidence is the recording of the meeting, with the interviews having assisted in setting the scene and having aided the understanding of the working environment and relationships at Torbay Council.

3.3. In assessing the conduct issues, it was necessary to review the Council's Code of Conduct and to assess the complaints against that code. The Council adopted a local code on 12th July 2012 and adopted a revised code at its meeting of Full Council on 25th February 2021. The Members Code of Conduct is contained under Part 5 of its Constitution.

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3.4. The Council's website www.torbay.gov.uk provides a link to the Code under the heading Behaviour, interests, and standards with the following introduction:

"We recognise the importance of high standards of conduct and ethics from its politicians and officers. We strive to ensure that our politicians and officers maintain these standards when representing us and the people of Torbay.

We have a 'local' code of conduct which explains what is expected of members and co-opted members of the authority when they are acting in that capacity and that such code makes appropriate provision for the registration by members of pecuniary and other interests of members.

The Code of Conduct ensures high standards and sets out the rules for how members should carry out their duties. It also covers areas of individual behaviour and makes sure members do not abuse their position or the Council's resources"

3.5. Councillor Foster was elected to Torbay Council in May 2019 and attended Code of Conduct training later that month. Councillor Foster has previously been an elected councillor elsewhere in the country and comes across as a very experienced councillor.

3.6. The area of contention at the 27th September meeting was who was a member of the Panel. The issue of who was a member of the panel arose almost immediately at the start of the meeting and was the focus of the discussion for almost an hour. Throughout the meeting, Councillor Foster appeared focused on and determined to take a vote on membership of the panel. The meeting was at times heated and this is what led to the complaints against Councillor Foster

4. Approach taken to the Investigation

4.1. An initial conversation took place with Amanda Barlow in her capacity as Monitoring Officer at Torbay Council. Ongoing contact was maintained throughout the investigation.

4.2. The submitted complaints were reviewed.

4.3. The letter dated 26th October 2021 issued by the Monitoring Officer to Councillor Foster was considered. (The letter confirmed the details of the complaints to Councillor Foster)

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4.4. The following individuals were interviewed:

Councillor Margaret Douglas-Dunbar
Councillor Karen Kennedy
Councillor Cat Johns
Councillor Christine Carter
Councillor Cordelia Law
Councillor Swithin Long
Kevin Mowat – Director of Place
Teresa Buckley – Clerk to the meeting
Councillor David Thomas
Councillor Hazel Foster

These interviews were all conducted via Zoom calls.

4.5. Brief notes of the interviews detailed at 4.4 were shared with and reviewed by the individuals concerned.

4.6. The Code of Conduct was considered in conjunction with the comments made within the complaints.

4.7. The recording of the meeting was reviewed.

5. Comments on the Report


5.1. The draft report has been peer reviewed by Hoey Ainscough Associates Ltd who are nationally recognised experts in Code of Conduct-related matters to ensure consistency of standard with other such reports nationally

5.2. The draft report has also been shared with the Monitoring Officer to ensure that it was of the required standard.

5.3. Both the Complainants and the Subject Member were given the opportunity to review the draft report and commented as follows:

Name of respondent	Response
Councillor Cordelia Law	6.5.1. This section is not quite accurate. The report states: “Officers ... clearly communicated with each other to ensure that senior and experienced officers were made available to assist.”

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	<p>When it became clear the Teresa Buckley was upset and crying, I felt incredibly uncomfortable at what was happening and it was me who messaged the Chief Executive at 17.02 saying asking Anne-Marie Bond to</p>  <p>telephone Teresa. I was so shocked and shaky that my text was very brief. As Mrs Bond was in a meeting, she replied that she had asked June Gurry to join the meeting. I have Mrs Bond’s permission to share a screenshot of this brief conversation.</p> <p>It was when it became apparent that Mrs Gurry was making no headway that I believe she contacted Mrs Bond. Initially however, more other officers joined as a result of my distress at what I was witnessing and my request for help for Teresa.</p> <p>Our Code of Conduct states “or is likely to compromise” and therefore I perceive that the actual outcome is irrelevant and the intention is important.</p> <p>I contacted Mrs Bond because Teresa had in my opinion been bullied into crying in an attempt to bully her into a course of action designed to confer advantage on the Conservative Group and therefore had Mrs Foster and Cllr D Thomas succeeded, would have compromised the impartiality of officers.</p> <p>Therefore I ask you to reconsider this as I consider their behaviour was likely to compromise, although it wasn’t successful, the intention was there. Intention is just as damning regardless of outcome.</p>
Councillor Swithin Long	Thank you for the report – I am happy with it.

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Councillor Hazel Foster	<p>I have now had a read of your report and make the following comments/ ammendments.</p> <p>6.1.6 after as, add; 'they had made a mistake as' reason; as stated by Cllr Kennedy</p> <p>6.2.8 After panel delete; 'repeated the ruling that political proprtionality was required.' reason for deletion. 'I was never told there was a ruling'</p> <p>'6.3.2 1st sentance Recording does not show the clerk being distressed. just her screen going off. Reason.The zoom meetings had two screens of members, not all taking part could be seen at same time by the chair or by the recording.</p> <p>6.7.3 radioexe report Ether the whole text from the radio exe report be inculuded or just the link. Reason, To pick out a few sentances could be misleading.</p>
Councillor Karen Kennedy	Replied, although did not make a specific comment on this report.
Councillor Christine Carter	I have read through the reports and am happy with the draft report.

6. Details of specific aspects of the complaint and conclusions

Each of the aspects of the complaints have been taken in turn below:

6.1. In relation to the Code of Conduct: 4.2

(a) treat others with respect.

Throughout the meeting there are several examples where Councillor Foster appeared to dismiss the opinion of others and at times refused to allow others to speak. It was only when the Chief Executive joined the meeting after over 40 minutes of discussion and debate that Councillor Foster suggested continuing the meeting without electing a panel. I have highlighted some of those instances below:

- 6.1.1. Shortly after the start of the meeting, the Clerk, Teresa Buckley explained the process for the composition of the panel and that the Conservative Party Group Leader had been asked to submit the names of 3 members of that group to be part of the panel. Councillor Foster seemed to completely ignore what had been said by Teresa Buckley and asked to move to the vote.
- 6.1.2. The same advice was given at various times throughout the meeting by officers (including June Gurry and Kevin Mowat) and each time, the guidance was ignored. Councillor Foster, in each instance, asked to move to the vote .
- 6.1.3. Councillor Mandy Darling stated that at the Overview and Scrutiny meeting on the previous Wednesday, that Councillor Douglas-Dunbar as the Overview and Scrutiny Coordinator, had requested that this committee be politically proportionate and that it would not be the names that were published on the agenda papers.
- 6.1.4. Councillor Douglas-Dunbar came in at that point and reiterated that she had acknowledged objections made by Councillor Foster to the committee composition but had made her decision. Councillor Douglas-Dunbar, confirmed that the committee composition did not preclude others from

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attending the meeting and commenting should they wish to do so.

6.1.5. Councillor Foster responded by asking Councillor Thomas to speak, and then appeared to totally ignore the comments made by the Clerk and by Councillor Douglas-Dunbar and Councillor Darling, immediately asking to move to the vote.

6.1.6. Councillor Kennedy, then spoke and stated that they wanted to spare the blushes of Governance Support as they had published the list of everyone who had expressed an interest in the meeting rather than those that were accepted onto the committee. Councillor Kennedy stated what her understanding of the makeup of the meeting should be.

6.1.7. Again, Councillor Foster, simply moved on from the comment, suggesting that the vote was taken.

6.1.8. Teresa Buckley commented that she was now in an awkward position and requested that the Chair permit Kevin Mowat to speak on the matter.

6.1.9. Councillor Foster replied that she was not going to permit the officer to speak, as it was a matter for members of the board and not for an officer.

6.1.10. This continued to be the approach taken throughout the meeting and any comments that were made which were not in line with the suggestion to move onto the vote, did not appear to receive any traction or interest from Councillor Foster as chair of the meeting.

6.1.11. In concluding that there was a breach with this regard, I have looked at the LGA guidance in relation to respect published to accompany their 2021 model Code of Conduct which states:

“failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect...any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour...Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly

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made statements in a political context, but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.”.

6.1.12. Although this case is not being judged against that Code but against Torbay’s own code, the Torbay Code contains a similar provision with regard to respect and this guidance is therefore relevant as an agreed definition of respect.

6.1.13. I draw particular attention to the fact that the Clerk was clearly very distressed and yet, no attempt was made by Councillor Foster to rectify the situation or even show any concern or empathy. In addition to this, Councillor Foster appeared to ignore the comments made by other officers and other Councillors who did not agree with the process being suggested by her. The fact that six councillors and an officer of the council, all complained, shows the strength of concern over the disrespect shown by Councillor Foster

6.1.14. I consider that Councillor Foster has not treated officers or fellow members with respect, having chosen to clearly ignore their comments on several occasions throughout the discussion. There was not any clear or obvious reflection on the comments being made or the impact of appearing to completely ignore the comments. As per the above guidance, I believe that a reasonable person would conclude that the behaviour shown by Councillor Foster in this meeting would influence the willingness of fellow councillors, officers, or members of the public to speak up or interact, because they would expect the encounter to be unpleasant or highly uncomfortable.

Taking all of the above into account, I have concluded that there has been a breach under this section of the code of conduct.

6.2. In relation to the Code of Conduct: 4. You must:

(c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.

6.2.1. There are several examples throughout the meeting where experienced officers of the Council have provided advice to the chair and the advice

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appears to have been completely ignored. There are 2 instances which I found particularly concerning:

- 6.2.2. When during the meeting, Councillor Foster was asked to take the view of Kevin Mowat (in his capacity as a senior officer of the council), she refused to let him speak and only permitted him to interact with the meeting when he was asked to perform some of the clerking duties of the meeting.
- 6.2.3. Kevin Mowat is a long-standing and senior officer of the council and from comments received when interviewing Members in relation to this investigation is certainly well respected.
- 6.2.4. It is difficult to understand, given that the Code of Conduct states that reasonable regard should be given to any advice provided by an officer of the council, and given the respect that Members have for this particular officer, why, he was not permitted to speak.
- 6.2.5. When questioned on this matter Councillor Foster stated that Kevin Mowat would have just repeated what had already been said and that she wanted to move on
- 6.2.6. Other Members interviewed, were under the impression that Councillor Foster wanted the Conservative Group to have the majority membership of the meeting and considered that Kevin Mowat would have explained the rules in a way that would not have permitted this to happen given the requirement to have political proportionality.
- 6.2.7. June Gurry joined the meeting as a senior and experienced member of the Council's Governance structure. Upon joining the meeting, it was suggested that it would be appropriate to adjourn the meeting whilst clarity was achieved around the membership of the panel. Councillor Foster dismissed this recommendation, although accepted that as chair, she could make that decision and went on to state that she wanted to vote on the panel membership prior to any such decision being made.
- 6.2.8. June Gurry interjected again and carefully and clearly explained the process for establishing the membership of the panel and repeated the ruling that political proportionality was required.
- 6.2.9. Councillor Foster stated that she did not agree with June Gurry and at one point stated, "that is not an answer" and attempted to move onto the vote. At this point, Councillor Foster suggested that it was up to June Gurry to make the decision to cancel the meeting or to carry on with the vote.

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6.2.10. Throughout the meeting, Councillor Foster refused to take the guidance of Teresa Buckley, Kevin Mowat or June Gurry and only agreed a way forward (that was something other than to vote on membership of the panel) when the Chief Executive joined the meeting and reiterated the advice already given by the other officers present.

6.2.11. When questioning Council Foster as to why she did not accept the advice of the officers present, and why there was a change in direction when the Chief Executive joined the meeting, Councillor Foster stated that nothing had changed but that she considered at that point that she was being bullied by officers.

My observations are that the four officers present gave clear and impartial guidance on the matters before them, and that Councillor Foster was just not willing to accept or follow the guidance.

Given the above, I am of the opinion that Councillor Foster was therefore in breach of the Code of Conduct under this section.

6.3. In relation to the Code of Conduct: 4.3 You must not:

(a) bully or harass a person

6.3.1. The complaints highlight a general concern about bullying of a number of individuals during the meeting. When assessing the video there are in particular a number of very concerning moments relating to officers.

6.3.2. At one stage it is very clear the Clerk (Teresa Buckley) is extremely distressed and so much so that she was unable to carry on with the meeting. Councillor Foster had refused to take the guidance offered by Teresa Buckley and had refused to accept her request to allow a more senior officer, Kevin Mowat to speak and assist.

6.3.3. When questioned on the matter, Teresa Buckley stated that the bullying would be a fair way to describe how she was treated during that meeting.

6.3.4. As a senior officer of the Council, for Kevin Mowat not to be permitted to speak and then to be asked to cover the clerking duties (with no signs of concern or compassion having been expressed as to how the Clerk was) seems unusual and unreasonable to me.

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6.3.5. When questioned as to why Kevin Mowat was not permitted to speak, Councillor Foster stated that Kevin Mowat would have just repeated the same thing and that she wanted to move on.

6.3.6. When June Gurry joined the meeting as a senior and experienced member of the Council's governance structure, Councillor Foster appeared very dismissive of her comments. At one point, dismissing the suggestion from June Gurry that a short adjournment would be helpful, with a rather blunt "NO". Councillor Foster also responded to June Gurry by saying that she disagreed with what she had said and at one point stated that June Gurry's comment was not an answer and suggesting that the officer should make the decision to either cancel the meeting or to take the vote.

6.3.7. In considering the accusation that these and other instances throughout the meeting are bullying, I have used The Independent Advisory, Conciliation and Arbitration Service (Acas) definition of bullying which is often used in employment tribunal cases and has been used in the LGA guidance referred to above and is as follows:

"Offensive, intimidating, malicious or insulting behaviour, involving an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient."

In watching the recording of the instances listed within this section (and others), I do consider that they fall within that above definition of bullying and have therefore concluded that Councillor Foster is in breach of the Code of Conduct under this section.

6.4. In relation to the Code of Conduct: 4.3 You must not:

(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

6.4.1. As part of the complaint pack, the complainants state "there can be no doubt that Cllr Foster was trying to use her position as Chair of the Task and Finish Group to confer an advantage to her party"

6.4.2. When asked about any party discussions on this matter, I got slightly conflicting answers during my interviews of Councillor Foster and Councillor Thomas as to whether the Conservative Group had discussed the attendance at the meeting in their Group meeting.

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- 6.4.3. Councillor Foster cited examples of previous such meetings that had been run without applying political proportionality. However, it is clear that the matter had been raised by Councillor Douglas-Dunbar prior to 27th September meeting. Officers also made it very clear during the meeting that political proportionality was required and that the Conservative Group should therefore only have 3 voting members at the committee.
- 6.4.4. It seems inconceivable to me that during such a public meeting, that was in essence aimed to seek information from other organisations, that the Chair of such a meeting would allow the debate on membership to continue for almost an hour, unless there was a predetermined motive.
- 6.4.5. The approach taken by Councillor Foster, at the meeting Chair, would have led to the majority of the membership of the panel being from the Conservative Group. I consider that this is the advantage that Councillor Foster was attempting to secure for her and the other attending members of the Conservative Group. By implication, this could have disadvantaged members of other parties.
- 6.4.6. I therefore do consider that this is a breach of this section of the Code of Conduct.

6.5. In relation to the Code of Conduct: 4.3 You must not:

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council

- 6.5.1. The complainants state "Councillor Foster was putting Officers in a position where they were forced to carry out the wishes of the Conservative Group".

Although I have sympathy with this opinion, it is evident from the recording of the meeting that this was not the final outcome. Officers were very robust in ensuring that every opportunity was taken to challenge the approach being taken and clearly communicated with each other to ensure that senior and experienced officers were made available to assist. Without this approach by officers, the outcome for the Council may well have been very different.

- 6.5.2. It is therefore difficult to conclude in this instance that a breach of the Code of Conduct occurred`

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6.6. In relation to the Code of Conduct: 4.3 You must not:

(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

6.6.1. The complainants consider that the first hour of the meeting on 27th September 2021 was "political grandstanding" and that the approach taken necessitated the need for senior officers to join the meeting out of normal working hours.

6.6.2. As with 6.5, I do have sympathy with this opinion. However, it is difficult to conclude that officers joining a meeting to provide clarity on matters constitutes a breach of the Code of Conduct by those involved and to draw such a conclusion could in the future reduce debate by Members or indeed be seen to encourage officers not to join meetings and offer support when challenges arise. Officers are there to give advice and it is not in my view a misuse of resources for them to have to attend the meeting, no matter how long the matter was dragged out.

6.6.3. I therefore conclude that Cllr Foster did not breach the Code with regard to misuse of council resources.

6.7. In relation to the Code of Conduct: 4.3 You must not:

(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

6.7.1. I have no doubt that an onlooker would be surprised to see how the meeting was run. There was a clear lack of concern for the officers in attendance, with the Clerk being visibly very upset and a senior officer being ignored and told that he could not speak.

In addition to this, there was clear disregard of the decision made by the Overview and Scrutiny Coordinator, Councillor Margaret Douglas-Dunbar and what appeared to be a general tone of no matter what was said that a vote was going to be conducted on the membership of the panel.

6.7.2. In concluding that there was a breach with this regard, I have again looked at the LGA guidance in relation to disrepute published to accompany their 2021 model Code of Conduct which states: .

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As a councillor, 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. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public's confidence in your ability to discharge your functions as a councillor or your local authority's ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their **role** into disrepute if the conduct could reasonably be regarded as either:

1. reducing the public's confidence in them being able to fulfil their role;
or
2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.

Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring **the authority** into disrepute.

6.7.3. Radio Exe Devon, picked up on the meeting :

<https://www.radioexe.co.uk/news-and-features/local-news/torbay-council-verbal-punch-up-leave-clerk-distressed/>

The article makes comments such as:

A Torbay Council meeting descended into disarray this week as councillors took an hour to decide not to have a vote.

In a meeting which had echoes of the famous 'Jackie Weaver' incident at Handforth Parish Council that went viral earlier this year, Torbay members engaged in a fierce hour-long debate over who could or could not be a member of a new group

At one point, a council clerk, who is not allowed to be involved in political debates, was put in the crossfire when she was asked to weigh in. After being placed in an impossible position, the clerk became visibly distressed

Private & Confidential

6.7.4. Following a pre meeting on 23rd September 2021, Councillor Foster could have discussed her concerns over the political proportionality arrangements and the fact that the invitation had gone out to more Members than were entitled to be on the panel, directly, and in detail, with the Clerk. However, she chose to approach this by bringing the matter to a vote in the public meeting of 27th September 2021. This ultimately resulted in the conduct at the meeting and the press interest in the matter.

6.7.5. Taking the above into account, the conduct of Councillor Foster at this meeting would, in my opinion, give a reasonable person the impression that she has brought her office and the Council into disrepute and as per the guidance, would reduce the public's confidence in Councillor Foster being able to fulfil her role and has adversely affected the reputation of the authority's councillors, in being able to fulfil their role. This is supported by the above article from Radio Exe Devon, which highlights some of the impression given to an onlooker and shows the impact that the conduct displayed at the meeting has had on the reputation of the Council.

I therefore find a breach of the Code of Conduct in this instance

Report of the Independent Person on the investigations into complaints made against Councillors Hazel Foster and David Thomas.

As an Independent Person appointed by Torbay Council, it is my role to review a report of an investigation into alleged breaches of the Members Code of Conduct. In reviewing the investigation report I must be satisfied that the investigation is of an acceptable standard and met the scope of the complaint.

I recognise that there were separate complaints submitted about behaviour at the same meeting and that two separate investigations were undertaken into the alleged behaviour of Councillors Foster and Thomas. I believe, however, that the opinion I would make can be applied to both cases and therefore provide the following comments with regards to both Investigation Reports.

I have received a draft copy of the Investigator's report which looked at complaints that alleged Councillor Foster and Councillor Thomas had breached the Members Code of Conduct. I note, however, that the meeting to which the complaints refer was recorded, providing a valuable primary source of evidence. I also note that the Investigator undertook a number of interviews, which I am sure took considerable time but were none the less important in establishing the facts of the case, I personally have not reviewed the recording or any interview transcripts, but I have considered the complaints and the investigation report. Additionally, the Investigation Report provides detailed consideration of all aspects of the complaints made. I do not believe that my role is to comment on whether I would have formed the same conclusion regarding potential breaches of the Members Code of Conduct, if I had done so. I am, in accordance with the remit of my role, of the opinion that the investigation has covered the scope and matters raised by the complainants.

Having concluded that the investigation has met the scope of the complaint, I also consider the investigation to be of an acceptable standard and will leave any final determination of whether Councillors Foster and Thomas have breached the Members Code of Conduct for the Hearing of a Sub-Committee.

Peter Styler – Independent Person for Torbay Council