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Tuesday, 8 May 2012

Adjourned Annual Meeting of the Council

Dear Member

I am pleased to invite you to attend adjourned annual meeting of Torbay Council which will be held in **Ballroom, Oldway Mansion, Torquay Road, Paignton, TQ3 2TE** on **Wednesday, 16 May 2012** commencing at **5.30 pm**

The items to be discussed at this meeting are attached.

Yours sincerely,

Elizabeth Raikes
Chief Executive

(All members are summoned to attend the meeting of the Council in accordance with the requirements of the Local Government Act 1972 and Standing Orders A5.)

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

June Gurry, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207012

Email: governance.support@torbay.gov.uk

(i)
THE MJ
2010
Achievement Awards
COMMENDED

Meeting of the Council Agenda

1. Apologies for absence

2. Declarations of interests

- (a) To receive declarations of personal interests in respect of items on this agenda

For reference: Having declared their personal interest members and officers may remain in the meeting and speak (and, in the case of Members, vote on the matter in question). If the Member's interest only arises because they have been appointed to an outside body by the Council (or if the interest is as a member of another public body) then the interest need only be declared if the Member wishes to speak and/or vote on the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of personal prejudicial interests in respect of items on this agenda

For reference: A Member with a personal interest also has a prejudicial interest in that matter if a member of the public (with knowledge of the relevant facts) would reasonably regard the interest as so significant that it is likely to influence their judgement of the public interest. Where a Member has a personal prejudicial 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.)

3. Communications

To receive any communications or announcements from the Chairman, the Mayor, the Overview and Scrutiny Co-ordinator or the Chief Executive.

4. Petitions

To receive petitions and any oral representations from the public in accordance with Standing Order A12 as set out below:-

(a) Petition in respect of Town Centre Business Rates

To receive the following petition and any oral representations from the public in accordance with Standing Order A12 as set out below:-

Petition requesting the council to investigate the current system of Business Rates and look specifically at the cost per square metre of prime sales area in both town centre and out of town retail sites. (approximately 84 signatures).

(b) Petition objecting to the parking charges on Torbay Road next to Torre Abbey Meadows

Approximately 130 signatures, this petition has been referred to the decision maker (Highways Services Manager, Patrick Carney in consultation with the Executive Lead for Safer Communities and Transport, Councillor Robert Excell).

(c) Petition requesting Installation of pavement bollards in Princes Road, Torquay

Approximately 40 signatures, this petition has been referred to the decision maker (Highways Services Manager, Patrick Carney in consultation with the Executive Lead for Safer Communities and Transport, Councillor Robert Excell).

(d) Petition requesting traffic calming at the top of Victoria Road, Torquay

Approximately 76 signatures, this petition has been referred to the decision maker (Highways Services Manager, Patrick Carney in consultation with the Executive Lead for Safer Communities and Transport, Councillor Robert Excell).

5. Members' questions

To answer the following questions asked under Standing Order A13.

6. Notice of motions

To consider the following motion, notice of which has been given in accordance with Standing Order A14 by the members indicated:

This Council notes that the Portas Report amongst other recommendations highlights the need for inexpensive parking for shoppers to regenerate town centres. In light of this, this Council instructs officers to identify town centre on street parking, suitable for low cost high turnover parking at the charge of 20p per half hour, with no stays longer than one hour. These initiatives should be enacted in time for the 1st of July 2012.

Submitted by Councillors Darling and Pentney

7. **Composition and Constitution of the Executive and Record of Delegations of Executive Functions** (To Follow)
 To receive details on the composition and constitution of the Mayor's Executive for 2012/13, together with the record of delegations of Executive functions (in accordance with Standing Order C4).
8. **Appointment of the Overview and Scrutiny Co-ordinator and Scrutiny Lead Members for 2012/13**
 To consider:
- (a) Appointing the Overview and Scrutiny Co-ordinator for 2012/13; and
 - (b) Appointing the following scrutiny lead members for 2012/13:
 - People
 - Place
 - Business
 - Health
- (Note: Executive Leads shall not be appointed as the Overview and Scrutiny Co-ordinator or Scrutiny Lead Members.)
9. **Appointments to Committees for 2012/13 and Other Bodies** (To Follow)
- (a) To appoint committees and other bodies, agree their terms of reference and to review the allocation of seats to political groups in line with statutory requirements.
 - (b) To request nominations from the group leaders of members to serve on those committees.
10. **Calendar of Meetings for 2012/2013** (Pages 1 - 6)
 To consider the provisional calendar of meetings for 2012/13.
11. **Scheme of Delegation for Council Functions**
 To agree the scheme of delegation for Council functions as set out in Part 3 of the Constitution in so far as they relate to Council functions.
12. **Member Development Policy - Mayoral Decision** (Pages 7 - 18)
 To consider a report on the Torbay Member Development Policy which sets out the framework for the Council's approach to supporting and developing the Mayor and councillors.
13. **Anti-Social Behaviour and the Private Rented Housing Sector - Mayoral Decision** (Pages 19 - 43)
 To consider the submitted report.
14. **Article 4 Direction restricting permitted development rights to change from Use Class C3 Dwelling to C4 Small Houses in Multiple Occupation (HMO)** (Pages 44 - 50)
 To consider the submitted report on the above.

15. **Sports Provision in Brixham and Churston** (To Follow)
To consider the submitted report.
16. **Innovation Centre 3rd Phase** (Pages 51 - 60)
To consider a report which seeks permission to invest in a major new Innovation Centre at White Rock, Paignton to create at least 220 new jobs, with the support of grant funding.
17. **Chief Executive - Voluntary Redundancy Request** (To Follow)
To consider the submitted report.
18. **Statutory Officer Appointment**
To confirm the following statutory officer appointments:

Returning Officer – Caroline Taylor
Electoral Registration Officer – Caroline Taylor
19. **Overview and Scrutiny Annual Report 2011/2012** (Pages 61 - 64)
To consider the submitted report.
20. **Report on an Investigation into Complaint No 10 002 564 Against Torbay Council** (Pages 65 - 105)
To consider a report on the above.

Agenda Item 10



Public Agenda Item: **Yes**

Title: **Calendar of Meetings for 2012/2013**

Wards Affected: **All Wards in Torbay**

To: **Adjourned Council** On: **16 May 2012**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Lisa Warrillow**

☎ Telephone: **207064**

✉ E.mail: lisa.warrillow@torbay.gov.uk

1. What we are trying to achieve

1.1 To seek approval for the calendar of meetings for the 2012/2013 Municipal Year.

2. Recommendation(s) for decision

2.1 That the calendar of meetings for 2012/2013, set out in Appendix 1 to this report, be approved.

2.2 That meetings of the Employment Committee and Civic Committee be held on an ad-hoc basis, to be determined by the Governance Support Manager in consultation with the relevant Chairman.

3. Key points and reasons for recommendations

3.1 The calendar of meetings for 2012/2013 (attached at Appendix 1) has been prepared based on the Council's decision-making structure and in accordance with the Council's Standing Orders.

For more detailed information on this proposal please refer to the supporting information.

Caroline Taylor

Deputy Chief Executive and Commissioner for Community Safety and Democracy

Supporting information to Report

A1. Introduction and history

A1.1 The provisional calendar of meetings for 2012/2013 was agreed by Council at its meeting held on 1 March 2012 (Minute 585/3/11 refers). In accordance with Standing Orders it is for the Council at its Annual Meeting to agree the provisional calendar.

A1.2 Following the agreement of the provisional Calendar, the following changes have been made for the final version:

The Council meeting scheduled for 15 November 2012 has been cancelled due to the Police and Crime Commissioner Elections being held on that date.

Further consideration has been given to the frequency and reporting requirements of the Overview and Scrutiny Board and Health Scrutiny Board. The Overview and Scrutiny Co-ordinator has been made aware of the proposed changes and the rationale for them.

In order to make best use of the resources available to it, the number of programmed meetings of the Overview and Scrutiny Board has been reduced. It is proposed that it will now meet prior to each meeting of the Council to enable the Board to consider issues and make recommendations to the Mayor in a timely fashion. Two further meetings have been programmed to give consideration to issues around children's safeguarding and corporate parenting in accordance with the emerging Work Programme of the Board.

The Health Scrutiny Board will still meet four times during the Municipal Year although the proposed January meeting has been moved to February to avoid conflict with the budget scrutiny meetings and the April meeting has been moved to May to enable consideration of the Quality Accounts of the health trusts which is a statutory requirement. The Health Scrutiny Board will now meet at 4.00 p.m.

In addition, a number of meetings of the Priorities and Resources Review Panel have been programmed to enable the Overview and Scrutiny Board to consider and make recommendations on the Mayor's budget proposals for 2013/2014 and beyond.

A1.3 The meetings of the Council have been programmed to allow sufficient reporting time between the meetings for the plans and strategies which are required to be approved through the Council's Policy Framework process and for the budget setting process.

A1.4 Meetings of the Employment Committee and Civic Committee are proposed to be held on an ad hoc basis, to be determined by the Governance Support Manager in consultation with the relevant Chairman/woman.

A1.5 Members are recommended to approve the calendar of meetings for 2012/2013, which includes the amendment made to the Council Meeting in December as set out in appendix 1 to this report.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 Wherever possible the timings of meetings have been set in accordance with the needs of the Committee Members and the Public, for example the Licensing Sub-Committees convene at 9:30 a.m. which is suitable for those making representations. Timings are kept under constant review by the Governance Support Manager. There is a small risk that some people will still not be able to attend these meetings, however, in most cases where public participation is permitted, the Council will accept written representations to enable people to put their points of view across.

A3. Other Options

A3.1 Members may wish to set alternative dates for meetings. However, the meetings have been timetabled to allow sufficient time for the reporting of the plans and strategies which make up the Council's Policy Framework and the Council's budget setting process. A calendar of meetings is required under Standing Orders and facilitates the organisation of the Municipal Year.

A4. Summary of resource implications

A4.1 Although there are approved budgets for the costs associated with these meetings the actual financial implications are not quantifiable at this stage. The calendar of meetings sets out a number of scheduled meetings, however, a number of unscheduled meetings may be held through the Municipal Year.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 The calendar includes the main religious festivals for the Christian, Hindu, Jewish, Muslim and Sikh faiths. Meetings on these dates have been avoided wherever possible.

A6. Consultation and Customer Focus

A6.1 The Mayor, Group Leaders and the Chief Executive have been consulted on the draft provisional calendar of meetings for 2012/2013.

A7. Are there any implications for other Business Units?

A7.1 Each Business Unit will be involved in preparing reports and officers will be required to present reports at meetings where appropriate.

Appendices

Appendix 1 Provisional Calendar of Meetings 2012/2013

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Constitution of Torbay Council

Torbay Council's Diversity Manual

<http://www.bbc.co.uk/religion>

www.interfaithcalendar.org

Agenda Item 10

Appendix 1

SCHEDULE OF COUNCIL, COMMITTEE MEETINGS 1 May 2012 - 15 May 2013

	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
Appeals Committee (Transport)	9.30 am Wednesday		18	8	12	10	14	12					
Audit Committee	2.00 pm Wednesday	27		19				19			20		
Council	2:30 pm / 5:30 pm Thursday	15 (Tue) 16 (Wed)	12	27	18	6 (Wed) 13 (Wed) 28	6	6					14 (Tue) 15 (Wed)
Development Management Committee	2.00 pm Monday	18	16	13	10	8	12	10	14	11	11	8	
Harbour Committee	5.30 pm Monday	11		17				17			18		
Health Scrutiny Board	4.00 pm Thursday		19			4				21			8
Licensing Committee	9.30 am Thursday	24					8						
Licensing Sub-Committee	9.30 am Thursday	Licensing Sub-Committee meetings will be held every Thursday at 9:30 a.m.											

Overview and Scrutiny Board	5:30 pm Wednesday						12	3	7 21			20		24 (Thu)	20		17		17
Standards Committee	2:30 pm Thursday											14				14			
Torbay Strategic Partnership/ Shadow Health and Wellbeing Board	3:30 pm Thursday																17	21	
Priorities and Resources 2013/2014 Review Panel	Various times																9 (Wed) 11 15 (Tue) 16 (Wed) 21 (Mon)		

Agenda Item 12



Title: **Torbay Member Development Policy**

Public Agenda Item: **Yes**

Wards Affected: **All wards in Torbay**

To: **Adjourned Annual Council** On: **16 May 2012**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **June Gurry**
Telephone: **01803 207012**
E.mail: June.gurry@torbay.gov.uk

1. **What we are trying to achieve and the impact on our customers**

1.1 The Torbay Member Development Policy sets out the framework for the Council's approach to supporting and developing the Mayor and councillors (members). The policy aims to provide a clear structure and purpose to identify and meet learning and development opportunities for members so that they are better placed to serve the community.

2. **Recommendation(s) for decision**

2.1 **That the Mayor be recommended to approve the Torbay Member Development Policy (as set out at Appendix 1 to this Report)**

3. **Key points and reasons for recommendations**

3.1 The Torbay Member Development Policy is an update of the former 'Making a Difference – A Development Strategy for Torbay Council Members' which was adopted in 2008. It builds on the extensive work already undertaken on member development and provides a structured approach to ensure all members are supported in their role.

3.2 The Policy also ensures that members' development is effective in supporting the Council's corporate objectives.

3.3 The Council was awarded South West Charter for Elected Member Development in 2008 and Charter Plus status in September 2010 for its approach to member development. The Policy ensures the Council is following

best practice and the standards required for the Charter.

- 3.4 The Members' Development Group has taken a lead role in developing the Policy and, if adopted, will oversee its implementation.

For more detailed information on this proposal please refer to the supporting information attached.

**Elizabeth Raikes
Chief Executive**

Supporting information

A1. Introduction and history

- A1.1 The Council has carried out extensive work on its approach to members' development and adopted its original strategy for this in February 2008. The 'Making a Difference – A Development Strategy for Torbay Council Members' ensured clear direction and purpose for developing the framework for future learning and development opportunities for members.
- A1.2 The Strategy has now been completed and the Torbay Member Development Policy sets out the Council's framework for its approach to member development. The Members' Development Group has taken a lead role in developing the Policy.
- A1.5 The Policy underpins the work already undertaken, confirms the commitment of the Council and the expectation from members. The key principles of the Policy are:
- a structured approach for attracting candidates;
 - ensuring members are well equipped with the necessary skills and knowledge to undertake their roles, which in turn builds the capacity of the Council to deliver its objectives defined in the Corporate Plan;
 - providing an integrated approach for identifying learning and development needs for members based on individual needs and the needs of the Council as a whole;
 - a member led approach to ensure members feel supported and confident in their role;
 - ensuring a consistent approach and equality of opportunity to learning and development; and
 - evaluating learning and development effectively and celebrating our successes.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

- A2.1.1 The key risks associated with the Policy include members not engaging with their development and the budget and staffing resources not being available.
- A2.1.2 To ensure members engage with their development, the Code of Conduct for Members includes a provision for members to comply with mandatory training requirements and to use best endeavours to undertake additional voluntary training. The Code also requires newly elected members to undertake induction training. All members sign-up to the Code of Conduct for Members when undertaking their declaration of acceptance of office.
- A2.1.3 All members are also given the opportunity to attend a one-to-one coaching session to produce a personal development plan to ensure development

programmes are tailored to their individual needs. All members have engaged with this and now have personal development plans. The approach to member development is very much member-led and members recognise the need to develop as well as the benefits and opportunities it brings.

A2.1.3 In respect of resources, the majority of support for members' development is provided in-house with external trainers being mainly funded through the Devon Member Development Shared Service.

A2.1.4 The support for members' development is part of the member support service provided by the Governance Support Team. In addition, the Devon Member Development Shared Service assist with conducting one-to-one coaching sessions. Senior members also contribute towards the delivery of members' development.

A2.1.5 Overall, the implementation of the policy will contribute towards maintaining the good governance of the Council by providing processes for ensuring that elected members are supported with their development.

A2.2 Remaining risks

A2.2.1 There are no remaining risks.

A3. Other Options

A3.1 Not to adopt the Policy or to adopt an alternative.

A4. Summary of resource implications

A4.1 The delivery of the Policy is provided within existing resources and the budget allocated for member development.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 The Policy will support the Council with building members' capacity which in turn will contribute towards strengthening these areas.

A6. Consultation and Customer Focus

A6.1 The Members' Development Group has taken a lead role in developing the Policy to ensure it is member-led. All members were consulted and provided with a copy of the Strategy.

A6.2 By adopting the Policy, the Council will ensure that we are building members' capacity in a structured way in order that members are better placed to serve our communities.

A7. Are there any implications for other Business Units?

A7.1 No.

Appendices

Background Papers:

The following documents/files were used to compile this report:

Making a Difference – A Development Strategy for Torbay Council Members 2008 to 2011



Making a Difference

Torbay Member Development Policy

Draft V3 – 2 April 2012

1. Introduction and context

- 1.1 Elected members undertake a variety of complex roles such as community leaders, scrutineers, elected mayors and portfolio holders. These roles are continually changing with increasing national and local demands. Therefore, the Council is fully committed to ensuring that all members are equipped with essential skills and knowledge in order to be effective in leading the Council to meet future challenges.
- 1.2 This policy outlines the Council's structured approach towards developing its members to ensure that all members, including co-opted members, are supported in their role. The policy also supports the Council in achieving its corporate objectives.
- 1.3 Members take a lead role in their development and the approach they adopt. They have been fundamental in the preparation of this policy and oversee its implementation.

2. Purpose and key principles

- 2.1 The aim of this policy is to provide a clear structure and purpose to identify and meet learning and development opportunities for members which, in turn, supports the Council to achieve its corporate objectives.
- 2.2 Key principles include:
 - a structured approach for attracting candidates;
 - ensuring members are well equipped with the necessary skills and knowledge to undertake their roles, which in turn builds the capacity of the Council to deliver its objectives defined in the Corporate Plan;
 - providing an integrated approach for identifying learning and development needs for members based on individual needs and the needs of the Council as a whole;
 - a member led approach to ensure members feel supported and confident in their role;
 - ensuring a consistent approach and equality of opportunity to learning and development; and
 - evaluating learning and development effectively and celebrating our successes.

3. Commitment and responsibility

- 3.1 The Council's commitment to members' development has been reaffirmed by the achievement of the South West Charter for Member Development in 2008 and the Charter Plus in September 2010. The Council is committed to ensuring that all members have the opportunity and are encouraged to develop in their roles for the benefit of the Council and our customers.
- 3.2 The Members' Development Group includes top political and cross-party membership (the Mayor, leaders and deputy leaders of political groups and the Overview and Scrutiny Co-ordinator) to take the lead on members' development. A specific budget for members' development is also allocated each year.
- 3.3 The Mayor designates specific responsibility to an Executive Lead to take the lead role for member development and work closely with relevant officers to implement this policy.
- 3.4 Group Leaders support their members with their learning and development by providing regular feedback and encouragement. They also ensure members participate in relevant training and development opportunities.
- 3.5 To ensure members' development has a full impact, members too must demonstrate a commitment towards their learning and development. The Council expects each individual member to take personal responsibility for their development to enable them to play a full part in supporting the Council to achieve its objectives and to share their knowledge and skills with others. To support this, the Code of Conduct for Members includes the following provision, which all members sign-up to when undertaking their declaration of acceptance of office:

'16. You will comply with the core requirements of the Council's annual Members' Development Programme. Core sessions will be held twice (or more where appropriate), and members who are not able to attend either session will be required to make alternative arrangements with the relevant officer(s) within one month of the last session being held. Failure to complete core training will be reported to the Group Leader and you will not be entitled to serve on any relevant Council meetings and bodies until such time as you have satisfactorily completed the core session.

Members will also use reasonable endeavours to undertake additional voluntary training in line with that approved programme. Newly elected members will undertake induction training as specified in the Member Development Programme.'

4. Contribution towards meeting corporate priorities

- 4.1 Members' development plays a significant part in the delivery of the Council's corporate priorities and objectives. The linkages are made as follows:

- a high level discussion by the senior leadership (member and officer) on the key priorities for the Council over the coming year and to identify how the various member roles will be able to contribute in the achievement of these and the Council's objectives;
- each year the Strategic Leadership Team assist the Members' Development Group with identifying organisational and corporate development priorities for inclusion in members' development programmes;
- each course contained in the members' development programmes makes clear linkages to the Council's corporate priorities;
- members' personal development plans include linkages to the delivery of the Corporate Plan; and
- evaluation covers how learning and development has impacted on meeting the Council's corporate objectives.

5. Member Development Framework – how it works in practice

5.1 A diagram illustrating the cycle for member development is attached. The member development framework is provided through:

5.2 Attracting candidates

In the run up to local elections, a variety of methods are to be used to communicate the positive aspects of being a councillor/elected mayor to the community and prospective candidates, including:

- appropriate timing to coincide with the elections process and providing information to the main political associations in the area;
- providing realistic information about the commitments required of members so that individuals are aware before making the decision to stand for election;
- providing reassurance by demonstrating learning and development opportunities and the support available; and
- encouraging a wide range of people to become members.

5.3 Induction

Induction sessions are offered to all members. New members receive a good grounding on the requirements of being an elected member and help to develop/harness existing skills to undertake the various roles. Induction also provides a valuable refresh for returning members. Preparations for induction start in good time prior to the election to enable existing members to contribute towards the format and content of the induction.

5.4 Identifying councillors' role in achieving corporate objectives and development feedback from Group Leaders

A high level discussion by senior leaders (member and officer) establishes a clear understanding as to how the various member roles (including opposition members holding the Council to account) can contribute towards meeting the Council's priorities and objectives. Following this, Group Leaders meet with members of their group to discuss how individuals can contribute in their respective roles e.g. committee, community leadership and any specific areas of special responsibility. This will ensure that each member is aware of what they need to do to meet the needs of the community, regardless of whether they are in a majority or minority group on the Council or if they are an independent member. (Independent members may choose who they wish to meet for this discussion i.e. Chief Executive or Group Leader.)

5.5 Identifying development needs

Members' individual development needs are identified by:

- using the Members' Skills framework as a basis for measuring skills and abilities;
- the production of personal development plans; and
- identifying personal goals and targets.

This is undertaken annually with a six month review also being offered. A confidentiality protocol has been developed to reassure members of the confidentiality of this process.

The Strategic Leadership Team also supports the Members' Development Group each year in identifying organisational/corporate priority development needs.

5.6 Learning and development programmes

The Members' Development Group produce a members' learning and development programme each municipal year. In the year of a local election the programme includes a wide-ranging induction programme.

The programme addresses:

- developing skills and roles as identified through the personal development planning process;
- organisational development incorporating corporate objectives; and
- keeping up to date with national issues.

A variety of delivery methods are utilised e.g. training courses (local, national, in-house and joint member/officer sessions), reading materials, on-line learning, observing, mentoring and coaching from other members/officers and briefings.

5.7 **Core training**

The Code of Conduct for Members requires all members to receive core (or mandatory) training (see paragraph 3.5 above). The areas to be covered by core training are identified by the Members' Development Group each year. Core training is selected to enable members to better carry out their duties and safeguard the Council in respect of legislative requirements. The Members' Development Group will determine when an assessment of members' understanding is required to ensure they have reached the required standard to fulfil their responsibilities.

5.8 **Continuous professional development**

After the initial personal development plans have been prepared, members are expected to review/update these and are given the opportunity to develop personal targets and goals. This is undertaken with support from Group Leaders and/or a senior officer from the Governance Support Team. This also assists with succession planning for members to develop for new roles.

Members' training records are maintained and available on their webpages on the Council's internet site. This can be used as their personal record of achievement and used as transferable evidence throughout their career.

5.9 **Sharing learning**

Members are encouraged to share their learning with their colleagues including across the political groups. Members and officers have a wide variety of skills and knowledge and these are utilised to support others where possible e.g. through members and officers delivering training, mentoring, coaching and observing. Relevant Executive Leads and/or Chairman and the Governance Support Team are involved in supporting officers in preparing and delivering training.

The Council is active in working with its neighbouring authorities throughout Devon to ensure there are opportunities for members to share learning with their peers. This is facilitated via the Devon Member Development Shared Service of which the Council is a member. The Council is also part of a mentoring partnership of authorities within Devon and Wiltshire Council providing external mentoring opportunities for members.

Brixham Town Council is invited to attend relevant training events run by the Council and joins the Council on its work on attracting candidates and preparing for induction.

5.10 **Support and resources**

Members will be at different stages in their political career and require varying levels of support. All members are supported with their learning and development and are assisted by:

- an annual members' development budget, supported by the Mayor and Political Groups protocol for its allocation;

- equality of opportunity, supported by the Mayor and Political Groups Protocol;
- dedicated officer support from the Governance Support Team and from officers across the Council;
- support in identifying development needs and personal development planning by Group Leaders and the Governance Support Team;
- ensuring success of development actions are evaluated;
- the supply of a personal members' development pack; and
- administration of development opportunities including communication of events and promotion, booking courses and maintaining electronic records of attendance/achievement.

5.11 Evaluation

Evaluation is undertaken to ensure learning and development activities are successful for individuals and the Council as a whole.

As part of the personal development planning process, members identify their own success criteria for identified activities. Evaluation is also undertaken at different levels including skills and knowledge gained at course (including facilitators' feedback), review by members of learning and development received and high level evaluation on the impact member development has had on meeting corporate objectives.

An annual evaluation report covering all the levels of evaluation is presented to the Members' Development Group to enable the Group to identify future improvements.

In addition, evaluation is also undertaken on specific projects (e.g. induction) and reports on 'lessons learnt' presented to the Members' Development Group.

5.12 Celebrating success

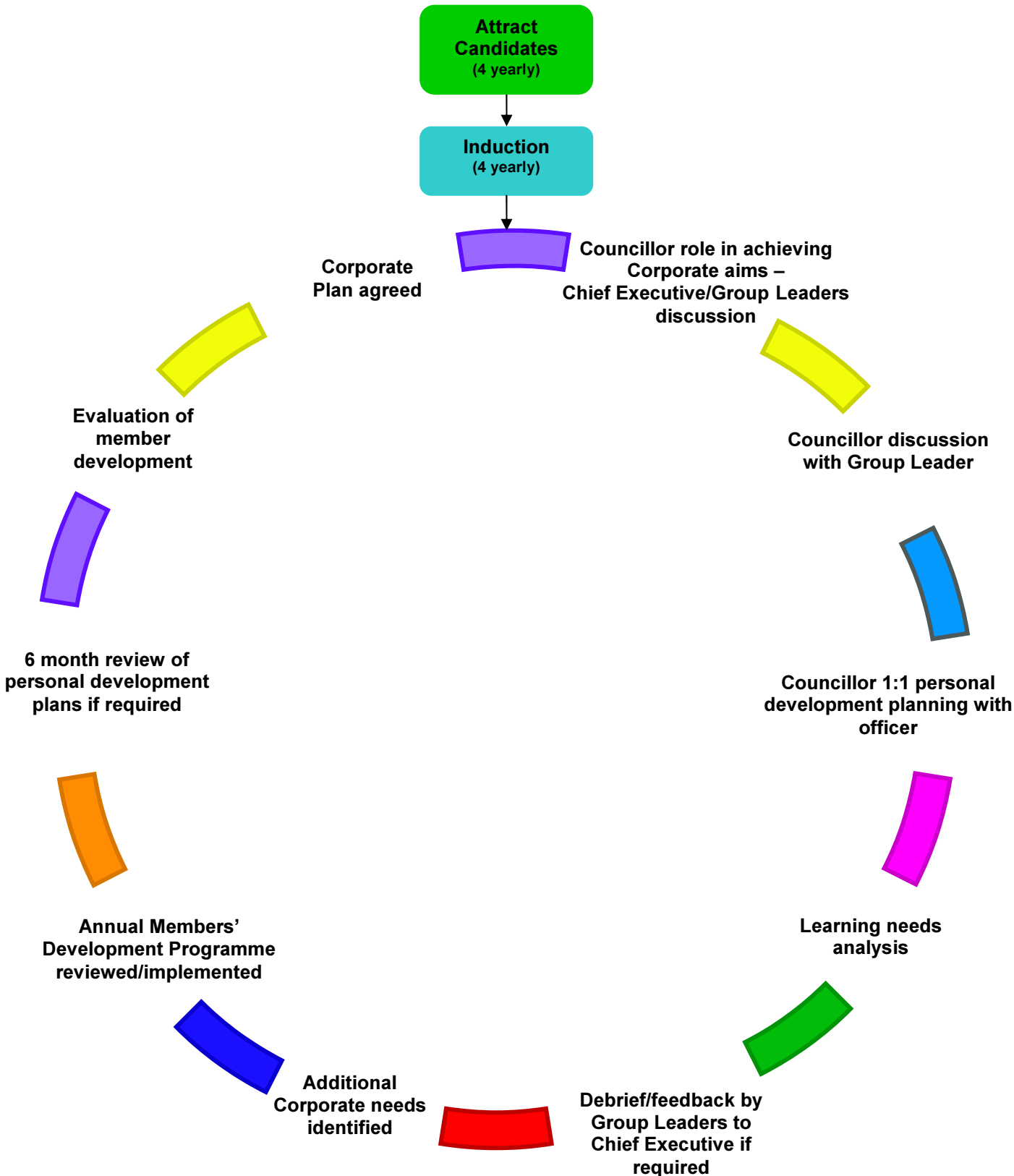
To celebrate success and in recognition of our achievements, the Council will continue to maintain its Charter status and share best practice with our neighbours (via the Devon Member Development Shared Service). Individual member's success in completion of training courses is published on members' webpages on the Council's internet site.

6. Monitoring and review of this policy

- 6.1 The monitoring and review of this policy is undertaken by the Members' Development Group.

For recommendation for adoption by the Mayor of Torbay at the Adjourned Annual Council Meeting, 16 May 2012

Torbay Member Development Annual Cycle





Issues Paper – Anti Social Behaviour and the Private Rented Housing Sector

To: Adjourned Annual Council **On:** 16 May 2012

Contact Officer: Fran Hughes, Executive Head of Community Safety
Telephone: 208002
E-mail: frances.hughes@torbay.gov.uk

Ref.	Overview and Scrutiny Recommendation:	Comments/Actions:	Timescale for Implementation:	Responsible Officer:	Mayor Agreed:
1.	That measures should be taken to address the lack of confidence felt by those immediately affected by anti-social behaviour in the multi-agency work being carried out and that the Police and Crime Commissioner, once elected, be requested to prioritise the issue.	The peninsula Strategic Assessment prepared by all Community Safety Partnerships and the Police includes antisocial behaviour issues as a key priority. This strategic assessment will be provided to the Police & Crime Commissioner as part of a welcome pack. The PACT process is currently being reviewed and a new programme implemented to encourage engagement around reporting and feedback.	Nov 2012 Aug 2012	Fran Hughes	
2	That, in future rounds of annual budget setting, the impact of anti-social behaviour and poor housing standards on the wellbeing of local residents and the reputation of Torbay as a tourist destination be acknowledged and funded accordingly.	The recommendations from this Overview & Scrutiny report will be considered as part of the internal service review of the Community Safety Business Unit and subsequently part of the overall prioritisation of the budget for this service later in the year.	July 2012	Fran Hughes	

Ref.	Overview and Scrutiny Recommendation:	Comments/Actions:	Timescale for Implementation:	Responsible Officer:	Mayor Agreed:
3.	That the Council no longer invest in the Torbay Landlord Accreditation Scheme and that an arms-length partner to run the Scheme on a self-funded basis be vigorously pursued.	The Landlord Accreditation Scheme will no longer be promoted and will be closed to new applicants from July 2012. It will be superseded by Landlord Rent Deposit Scheme.	July 2012	Fran Hughes	
4.	That immediate consideration be given to the Business Case (appended to this report) on fast-track, targeted enforcement to tackle anti-social behaviour and improve the quality of private rented sector housing with implementation in the current financial year.	The recommendations from this Overview & Scrutiny report will be considered as part of the internal service review of the Community Safety Business Unit and subsequently part of the overall prioritisation of the budget for this service later in the year as additional resources will be required.	July 2012	Fran Hughes	
5.	That there be a continuation of targeted multi-agency intervention to promote a rise in standards of housing accommodation.	The partnership approach to addressing standards of housing accommodation will continue with existing resources.	Ongoing	Tara Fowler/Fran Hughes	
6.	That targeted selective and/or additional licensing of houses in multiple occupation be prioritised in the emerging Housing Strategy and that a Business Case for this be prepared as a matter of urgency.	The recommendations from this Overview & Scrutiny report will be considered as part of the internal service review of the Community Safety Business Unit and subsequently part of the overall prioritisation of the budget for this service later in the year as additional resources will be required	July 2012	Fran Hughes	

Agenda Item 13
Appendix 1

Overview & Scrutiny

Confidence in your Council

Anti-Social Behaviour and the Private Rented Housing Sector

REPORT TO THE MAYOR
MAY 2012



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Further copies of this report can be obtained from :

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1. Foreword

I am pleased to present this report of the review by the Overview and Scrutiny Board into Anti Social Behaviour associated with Private Rented Housing Sector in Torbay.

It was clear from the start that incidents of anti social behaviour stretch far and wide across the Bay, so it was important to keep a clear focus on the scope of this review and to restrict it to those issues only associated with private sector housing.

Public perception around the level of anti social behaviour and public confidence in Torbay Council's ability to deal with repeated incidents were key lines of enquiry as were the roles and responsibilities of landlords and the support from the local community.

Successful outcomes can only be achieved by effective partnership working so the input from local community groups, our Safer Communities and Housing Team and Devon and Cornwall Police and others was invaluable.

In the current economic climate, diminishing resources, both in time and money, will put even more pressure on our already stretched services so, to address the findings of this review and in particular to generate some public confidence in the Council's ability to mount effective responses, it will be necessary for there to be some clear re-prioritisation of resources to tackle the issues.

Finally, I would like to thank all those that have contributed and supported this review.

Councillor Neil Bent

Chairman

**Anti Social Behaviour and Private
Sector Housing Review Panel**

2. Executive Summary

- 2.1 The objective of the review was to investigate and establish the perceived correlation between Anti-Social Behaviour (ASB) and private sector housing, whilst also seeking to identify underlying issues and contributing factors.
- 2.2 The review panel was established as, despite overall recorded incidences of ASB falling, ASB, particularly in relation to private sector housing, is an issue of particular concern to members within their communities.
- 2.3 There is an acceptance that there are links between general societal issues and poor quality accommodation – those who live in poor quality accommodation are likely to have poorer health and educational attainment and fewer employment opportunities. There is also an impact on the wider neighbouring environment.
- 2.4 The link between housing conditions and crime, offending and criminal-like behaviour is less well established. The debate about causation (i.e. poor housing conditions cause crime) versus association (i.e. poor housing and crime are both symptoms of wider social problems) is also very open. But it is clear that many regard poor housing conditions as an important causal factor.
- 2.5 The Review Panel found that there is some excellent partnership work ongoing in Torbay to minimise the impact of anti social behaviour on Torbay's communities and to tackle poor quality accommodation. It is recognised that anti-social behaviour is not exclusively within areas of private rented housing or carried out by those living in this sector.
- 2.6 The work being undertaken is both proactive and reactive but a limiting factor is the reducing funding of the Council and all its partners.
- 2.7 The Panel considered several options for the future and has prepared a Business Case for a different way of working within the Private Sector Housing Team to enable targeted enforcement activity. The Business Plan captures an initial view of the scope, investment needed and anticipate payback so that the constituent parts of the proposal can be prioritised, funded and authorised.

3. Introduction

3.1 The objectives of the Review were:

- To gain an understanding of ASB issues associated with private sector housing and its context.
- To identify and report on the underlying issues and contributing factors.
- To examine and report on the range and effectiveness of policies and initiatives aimed at tackling and reducing ASB as well as the underlying issues and contributing factors.
- Having regard to current best practice and the ever growing demand for efficiencies and best value for money, to identify measures to tackle and reduce ASB associated with private sector housing and the underlying issues and contributing factors.

3.2 The Review Panel gathered evidence from council officers and the Police along with community representatives. A representative of Shelter was invited, but unable, to attend.

3.3 The Review Panel was comprised of:

Councillor Addis
Councillor Bent (People Scrutiny Lead) (Chairman)
Councillor Barnby (Health Scrutiny Lead)
Councillor Davies
Councillor Faulkner (J)
Councillor Kingscote (Place Scrutiny Lead)
Councillor Parrott

4. Key Findings

Background

- 4.1 Private rented sector housing is accommodation that is privately owned and that is being rented out by a landlord, normally for some profit. The sector plays an important role in providing housing options for those not wishing or able to consider home ownership, or for those to whom social housing (housing owned by a council or housing association) is not an option.
- 4.2 Through its flexibility and speed of access the private rented sector can contribute to the social and economic well-being of an area but poor housing management and low standards can conversely lead to the failure of the local housing market and poor health.
- 4.3 The private rented sector accounts for almost 22% of the housing stock in Torbay compared to 12% nationally.

Tenure	Dwellings	Percentage			
	2011	2011	2009	2008	2006
Owner Occupied	44,870	70.1%	71.8%	71.8%	72%
Privately Rented	13,950	21.8%	19.6%	19.4%	19.7%
Registered Social Landlord	5,160	8.1%	8.6%	8.8%	8.3%
Total	63,980	100%	100%	100%	100%

Table 1: Proportion of Properties by Tenure in Torbay
(Source: Torbay Private Sector Housing Condition Surveys 2006/2008/2009/2011)

- 4.4 Of the approximately 14,000 private rented properties in Torbay:
- 0.6% (83) are licensable Houses in Multiple Occupation
 - 10.4% (1450) are non-licensed Houses in Multiple Occupation
 - 89% are single household properties
- 4.5 Houses in Multiple Occupation (HMOs) are properties which are let as a main or only home to at least three tenants, who form more than one household and who share a kitchen, bathroom or toilet. A HMO must be licensed if it is three or more storeys and is occupied by five or more tenants who form more than one household.
- 4.6 Anti-Social Behaviour is behaviour that is likely to cause harassment, alarm and distress to members of the public not of the same household. Guidance gives examples of what this might be, but it does not provide a definitive list of offending behaviour. Some examples of anti-social behaviour are begging, criminal damage, harassment and drug and alcohol misuse.

Tackling Anti-Social Behaviour

- 4.7 Reviews of the issues surrounding housing and anti-social behaviour have previously been undertaken by the Overview and Scrutiny Board. Since those reviews, the way that anti-social behaviour is addressed in Torbay has been substantially altered. In 2009/2010 a Neighbourhoods Team was established by the Council within the Community Safety Business Unit which included the transfer of the ASB Team from Safer Communities Torbay. The Neighbourhoods Team deal with enviro-crime issues such as dog-fouling, fly-tipping and public health issues such as drainage and filthy and verminous properties. This was also aligned with the transfer of the Housing Standards Team into the Business Unit later in the year.
- 4.8 The re-organisation enabled the way that ASB was tackled to be delivered more effectively with reduced resources. Due to the definition of ASB and links with criminal activity there is a close working relationship with the Police. Cases are often progressed in partnership, with the Police's legal team taking the lead on criminal activity.
- 4.9 One key improvement has been the establishment of Multi Agency Partnership Tasking (known as Partnership Tasking) where multi agency teams work together across Torbay to resolve issues at an early stage. The aim of Partnership Tasking is to raise the standards of delivery of front line services to communities and ensure a joined up approach to dealing with issues that may involve several agencies.
- 4.10 The objectives of Partnership Tasking are:
- To help reduce crime and disorder in line with the aims and objectives of the Safer Communities Strategic Assessment and the PACT (Partners and Communities Together) priorities.
 - To increase confidence and provide public reassurance.
 - To identify repeat victims, locations and offenders at the earliest opportunity.
- 4.11 There are integrated processes in place with the Police which enables Anti Social Behaviour Orders (ASBOs) to be obtained off the back of a criminal conviction. Closer links have also been formed with the Integrated Offender Management service. The SOS Bus no longer operates as a standalone unit and the Street Pastors now work intensively in Torquay to help manage the night-time economy.
- 4.12 The Family Intervention Project is working successfully with families with complex issues, including those associated with youth crime and anti-social behaviour with excellent results and clear evidence of cost savings.

4.13 The Street Wardens continue to operate in some of the most deprived wards in Torbay working with the local community to take ownership of their own environment and improve community spirit. They provide victim support to those that are experiencing anti-social behaviour.

4.14 As recognition for the work that has taken place to tackle anti-social behaviour, Torquay Town Centre was awarded a Purple Flag. Purple Flag accreditation is similar to the Green and Blue Flag schemes for parks, green spaces and beaches. The accreditation is awarded for the quality of the evening and night time activities that are on offer, and the cooperation between the Council, the Police and businesses in managing the area.

Levels of Anti-Social Behaviour, Reporting Processes and Follow-up

4.15 Since 2007, the number of ASB incidents in Torbay that are recorded by the Police has fallen as shown in the figures below. Since the peak in 2007, there has been a 26% reduction.

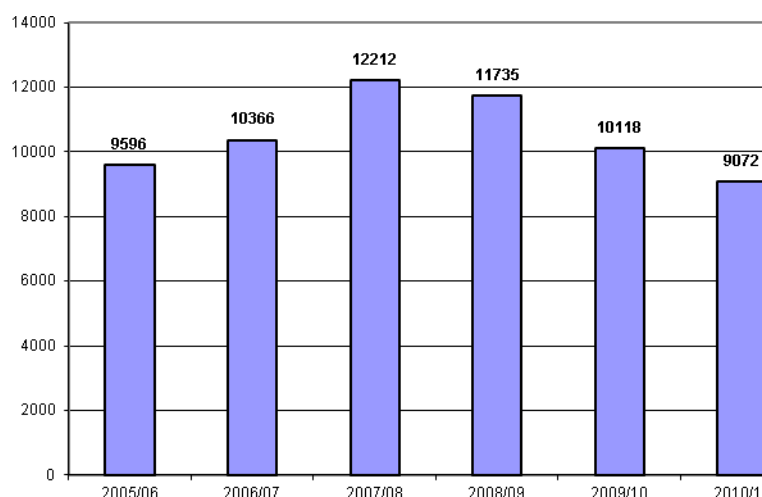


Figure 1: Police Anti-Social Behaviour Data by Year
Source: Devon and Cornwall Police

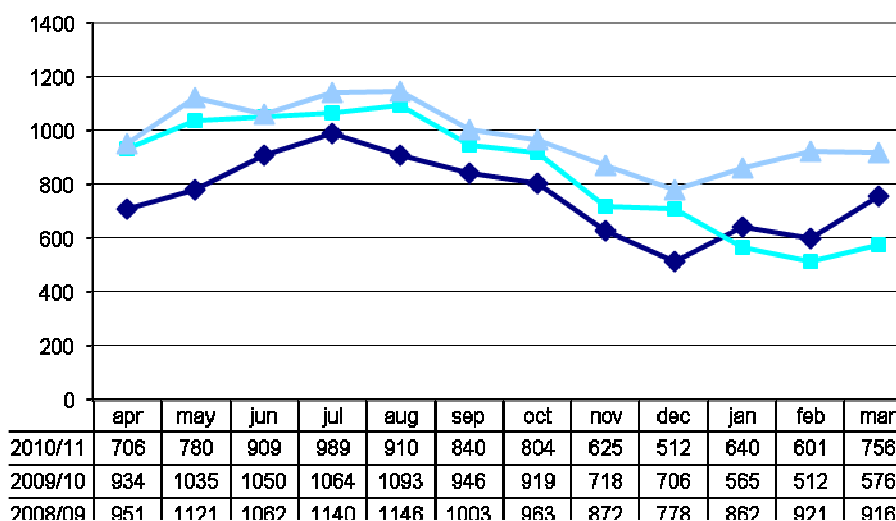


Figure 2: Police ASB Data by Month
Source: Devon and Cornwall Police

- 4.16 Home Office data shows that Torbay performs better than average for reported crime against national statistics. Out of the 334 Community Safety Partnerships in England and Wales, Torbay was 207th in terms of the rate per 1000 population at 39 per 1000. The England and Wales average was 41 per 1000. Of the eight Community Safety Partnerships in the Devon and Cornwall peninsula, Torbay was 7th. From the baseline in 2005/06, there has also been a large reduction in night time assaults as well. Data for 2010/11 to December 2012 indicates that 2011/2012 will be the lowest year since monitoring started.
- 4.17 Despite this data, the Panel believe that the public perception is that anti-social behaviour is still an issue in Torbay. Councillors also have a concern that people are not reporting incidents and the Panel will await with interest to see if the introduction of the 101 Police non-emergency number encourages the reporting of the incidents.
- 4.18 In terms of the Council's ASB Team, in the six months up to March 2012, 128 individuals alleged to have been causing ASB have been dealt with. In general, 25% of these relate to youth ASB with the other 75% being neighbour disputes or incidents involving adults. The majority of serious cases relate to individuals that have substance misuse issues and/or mental health concerns.
- 4.19 60% of referrals to the ASB Team are from members of the public. The Team has a dedicated phone number (with an out-of-hours answering service) and a dedicated email address. Other referrals are from partner agencies such as the Police when incidences are reported to individual officers or, more recently, through the 101 non-emergency number.
- 4.20 Once a report has been received by the ASB Team, a member of the team contacts the person who has made the complaint to let them know who will be dealing with it. Once there is a detailed understanding of the case, a decision is made about what action will be taken. A clear escalation process exists to ensure that a proportionate response is provided to tackle issues.
- 4.21 If appropriate a series of staged letters are sent to evidence the extent of the problem and work undertaken to resolve the issues. Of the 128 cases highlighted in paragraph 4.17, 72 cases were resolved through early intervention with a Stage 1 warning.
- 4.22 If the Stage 1 and 2 warning letters are not adhered to an Acceptable Behaviour Contract (ABC) and a subsequent Anti-Social Behaviour Order (ABSO) may be issued.
- 4.23 Outcomes of the work of the Anti-Social Behaviour Team are reported via the Communities Board which has now taken over the work of the Safer Communities Executive. Community engagement activities have also started through Partnership Tasking to ascertain the views of residents about neighbourhood specific issues and to evaluate the effectiveness of multi-

agency responses. Feedback to individual complainants cannot always be provided due to data protection requirements.

Locations of Anti-Social Behaviour

- 4.24 There is an acceptance that there are links between general societal issues and poor quality accommodation – those who live in poor quality accommodation are likely to have poorer health and education attainment and fewer employment opportunities. There is also an impact on the wider neighbouring environment.
- 4.25 The link between housing conditions and crime, offending and criminal-like behaviour is less well established. The debate about causation (i.e. poor housing conditions cause crime) versus association (i.e. poor housing and crime are both symptoms of wider social problems) is also very open. But it is clear that many regard poor housing conditions as an important causal factor.
- 4.26 Anti-social behaviour is not limited to those who live in private rented sector accommodation. There is no typical profile of who causes anti-social behaviour.
- 4.27 The main ASB hotspots, as reported to the Police, are in Torquay Town Centre which are also the areas of main HMO concentration. However, the types of ASB reported in this beat area are mainly related to rowdy behaviour, rather than the neighbourhood and environmental issues normally associated with HMOs. There are further clusters in Paignton Town Centre. It should also be noted that offenders do not necessarily offend in the immediate vicinity of their place of residence (although the exception to this may be on the larger housing estates). Anti-social behaviour tends to occur in the more deprived wards of Torbay.
- 4.28 Through Partnership Tasking, the Council now has a wider range of data about which landlords have properties which generate anti-social behaviour complaints. This enables a targeted approach to be undertaken as complaints arise.

Tackling Poor Quality Accommodation

- 4.29 The Housing Standards Team undertake a range of functions:
- Responding to housing condition complaints across all tenures and take appropriate action based on risk
 - Acting to improve landlord responsibility
 - Working in partnership to tackle ASB
 - Reducing fuel poverty and improve health through energy efficiency measures
 - Administering of Disabled Facilities Grants and Financial Assistance

- Reducing the number of empty properties and the impact on the community
- Licensing caravan sites and houses in multiple occupation
- Managing the Landlord Accreditation Scheme

4.30 Launched in October 2007, the Torbay Landlord Accreditation Scheme (TLAS) is a voluntary compliance scheme whereby private landlords abide by a code of practice which covers the condition and management of their properties as well as the landlord's relationship with their tenants. TLAS accredits both the landlord and the property and landlords can choose which properties they wish to accredit. Landlords and properties are checked via the Housing Standards Team linked to their checks on HMOs.

4.31 As part of the Council's strategic approach to housing, a review of the Scheme was carried out in November 2011. It concluded that, whilst there is support for landlord accreditation from both landlords and tenants, the overall impact of TLAS has been limited. This is despite the effort of the Housing Standards Team in carrying out inspections and processing applications.

4.32 The strengths of the Scheme have been the establishment of a voluntary base of landlords who commit to providing independently verified, better standard accommodation and more responsible housing management. The health and safety standards of the 115 properties accredited by the scheme have been improved.

4.33 However, the weaknesses of the Scheme are that it has not met its stated aim of housing those threatened with homelessness and, when viewed in the context of the amount of private rented sector accommodation, has had a limited impact. This is due to three reasons: the lack of resource to fully commit to make the scheme successful (and therefore accredit a large number of properties); the lack of real value incentives for landlords and the lack of publicity and marketing of the scheme that would make it valuable to those looking for accommodation.

Options for the future

4.34 There are a range of options to further tackle anti-social behaviour and the quality of private rented sector housing. They are listed below as a hierarchy of options.

4.35 Further targeted intervention which could take a more strategic approach of tackling individual landlords that are identified as being "high risk". This would be based on the type and number of complaints received across the Department but is not as simplistic as being based on volume alone.

4.36 A strong enforcement stance is required to send out a clear message that landlords need to take responsibility. This type of approach is often resource intensive.

- 4.37 An Article 4 Direction could be made which would remove permitted development rights meaning that planning permission would need to be sought for smaller HMOs to be created. This option has been considered by one of the Council's Policy Development Groups and will be subject to a formal report at Council in May 2012.
- 4.38 As explained earlier in this report, some HMOs are subject to mandatory licensing. The Housing Act 2004 provides the Council with powers to require certain other rented accommodation to be licensed in specified circumstances. In an area subject to licensing, all private rented accommodation within the criteria established by the Council must obtain a licence to operate.
- 4.39 One option would be additional HMO licensing where licences would be required for different classifications of HMOs. This is not a blanket approach to all private sector accommodation, but does extend the criteria to those HMOs that cannot be licensed under the mandatory scheme.
- 4.40 The second option under the Housing Act allows the Council to apply a selective licensing scheme to all privately rented accommodation in its area, or any part of it, providing certain conditions are met.
- 4.41 Landlord Accreditation Schemes are also a mechanism for improving the quality of private rented sector accommodation. The strengths and weaknesses of Torbay's Scheme was discussed earlier in this report.
- 4.42 Interim Management Orders authorise the Council to manage the property in place of the landlord. The aim is to protect the current occupiers of the property and, if applicable, those occupying or owning properties in the vicinity. By taking such direct intervention, the aim is to improve the management of the property so that it can be returned to the landlord.

5. Conclusions

- 5.1 The Review Panel found that there are examples of some excellent partnership work ongoing in Torbay to minimise the impact of anti social behaviour on Torbay's communities and to tackle poor quality accommodation. It is recognised that anti-social behaviour is not exclusively within areas of private rented housing or carried out by those living in this sector. However, the Panel found that there was a lack of confidence, by those immediately affected, in Torbay Council's ability to address anti-social behaviour due to funding constraints.
- 5.2 Tackling anti-social behaviour is not a statutory duty of the Council and therefore the Council's reducing funding is limiting the development of work in this area.
- 5.3 The private sector is housing vulnerable clients with complex needs. Further, the impending changes to the benefits system will encourage increased use of the private sector and, in particular, houses in multiple occupation.
- 5.4 There are currently no incentives for landlords to improve standards. The Torbay Landlord Accreditation Scheme is not a statutory requirement and is not a sustainable way of increasing standards. The Scheme needs further investment or needs to be abolished.
- 5.5 However, the Panel believe that consideration should be given to increasing resources for further targeted enforcement and asked that a Business Case be prepared for consideration.

6. Recommendations

- 6.1 That measures should be taken to address the lack of confidence felt by those immediately affected by anti-social behaviour in the multi-agency work being carried out and that the Police and Crime Commissioner, once elected, be requested to prioritise the issue.
- 6.2 That, in future rounds of annual budget setting, the impact of anti-social behaviour and poor housing standards on the wellbeing of local residents and the reputation of Torbay as a tourist destination be acknowledged and funded accordingly.
- 6.3 That the Council no longer invest in the Torbay Landlord Accreditation Scheme and that an arms-length partner to run the Scheme on a self-funded basis be vigorously pursued.
- 6.4 That immediate consideration be given to the Business Case (appended to this report) on fast-track, targeted enforcement to tackle anti-social behaviour and improve the quality of private rented sector housing with implementation in the current financial year.
- 6.5 That there be a continuation of targeted multi-agency intervention to promote a rise in standards of housing accommodation.
- 6.6 That targeted selective and/or additional licensing of houses in multiple occupation be prioritised in the emerging Housing Strategy and that a Business Case for this be prepared as a matter of urgency.

Appendix 1 – Business Case for Targeted Enforcement



DRAFT PROJECT BRIEF

Community Safety

Targeted Enforcement Activity Project -Private Sector Housing

Version: 1
Date: April 2012

Authors: Tara Fowler

Project Sponsor: Fran Hughes/ Councilor Neil Bent

Client: Torbay Council

Version Control

Ver.	Date	Changed By	Change	Sections

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PROJECT BRIEF

1. Purpose

This document has been produced to provide a project brief on a different way of working within the Private Sector Housing Team to enable targeted enforcement activity. It captures a 'first cut' view of the scope, investment needed and anticipated payback so that the constituent parts of the Programme can be prioritised, funded and authorised.

2. Background

An Overview and Scrutiny review was instigated in October 2011 looking at anti social behaviour and its links with poor quality accommodation, more specifically from licensable Houses of Multiple Occupation (HMO's). A detailed report has been produced as part of this process detailing the areas of work scrutinised.

The way within which ASB is managed within Torbay has changed considerably over the last 2 years following a restructure within the Community Safety Department, providing closer operational links between ASB, Private Sector Housing and the Police. This has enabled better working practices to be developed and a more co-ordinated approach, so that more effective outcomes are achieved.

There are clear evidenced links between general societal issues and poor quality accommodation. The quality of accommodation within which one lives can affect ones health, employment, academic attainment and impact upon the wider neighbouring environment. The consequences of which have a negative impact on resources across all agencies.

The link between housing conditions and crime, offending, and criminal-like behaviour is less well-established than that between housing and health and housing and education. The debate about causation (that is, poor housing conditions as a cause of crime) versus association (poor housing and crime both as symptoms of wider social ills) is also very open. It is clear however that many regard poor housing conditions as an important causal factor.

Of perhaps equal importance is the role that secure and good quality housing plays in preventing crime, especially among those who have already offended.

As the National Offender Management Service put it..

'...Accommodation can provide the anchor for a previously chaotic life and act as a springboard for other crucial steps such as getting and keeping a job, and accessing health care or drug treatment'

Taking the wider research as a whole, there is powerful evidence that decent housing contributes to the prevention of crime, to stable neighbourhoods that act as deterrents to criminality, and to the role of good housing as a force

preventing reoffending, especially among young people potentially heading down paths of criminality.

There are also a number of emerging issues locally that are and will impact upon the quality and stability of accommodation that individuals receive, these are:

- **Changes to the Housing Benefit System** – It is projected that there will be an addition 400 rooms required in Torbay within shared houses, as changes to the level of housing benefit are implemented and the shape of the accommodation market alters accordingly. This has the potential to have an impact on the wider community in certain areas and an increase in ASB.
- **Continued Economic Pressure** – In the current economic climate there is a decrease in the ability or willingness of landlords to undertake improvement work or manage their properties effectively.
- **Condition of Housing Stock** – The age of the housing stock in Torbay is varied but those properties visited by the Private Sector Housing Team predominantly consists of houses that were built at the turn of the century and have been poorly converted. Without continued investment and maintenance these will decline further.
- **Retaliatory Evictions** – Evidence is emerging that harassment or retaliatory evictions are taking place if tenants complain about the quality of the accommodation; this will potentially place additional pressure on Housing Options to re-house individuals.

3. Objectives

The project aims to address some of the above pressures and improve the quality of private rented accommodation in Torbay and its impact on the wider community through increased tenant and landlord responsibility.

More specifically:

1. The development of a way of prioritising work based on the confidence in management of a property and risk rating. This will target those properties that fall outside mandatory HMO licensing schemes, representing the highest risk.
2. To reduce the time from initial complaint received by the Private Sector Housing Team from a member of the public through to resolution.
3. Mitigation of the risks posed to tenants and Housing Options as a result of retaliatory eviction.
4. Increase in the proportion of properties within the private rented sector that are assessed by Housing. Over the last 3 years the team have received complaints and dealt with issues related to 10% of the private rented stock.
5. Reduction in the number of repeat complaints about individual properties. Last year this represented 17% of the team's case load.
6. Increase in level confidence within the community that 'rogue' landlords are managed effectively.

4. Scope

It is proposed that a phased approach be undertaken in achieving more effective enforcement action. This will be delivered through a dedicated resource targeting identified properties that represent the highest risk.

Phase 1: Fast Track Enforcement

A fast track approach for managing prosecution cases would be put in place to achieve some quick results to encourage landlords to manage their properties appropriately. This will pull on existing cases that are within the current case load of the Housing Standards team and where legal notices have not been complied with and supporting evidence is in existence to proceed with a prosecution case. The additional resource will focus upon these cases and will not have a daily caseload enabling cases to be progressed more rapidly.

Cases to be fast tracked should be risk rated on the level of confidence in management of the property. This should be based on intelligence from the Housing, ASB and wider Neighbourhood team including enviro-crime issues. Pass ported cases where several properties have been identified that are owned by an individual would also be fast tracked in parallel, to facilitate maximum impact and dual listings at Court.

Phase 2: Targeted Enforcement Approach

Properties will be proactively prioritised for enforcement activity across the Bay based on strong robust criteria. This will be assessed on clear criteria from information on complaints and intelligence obtained from the Community Safety Department and wider partnership including Locality Tasking. This will enable a confidence in management score to be obtained in relation to that property and will target those properties that fall outside the mandatory HMO licensing scheme.

All work undertaken will be accompanied by a communications strategy detailing the targeted work the local authority is planning and has undertaken and why.

Any cases where retaliatory evictions are evident or suspected as a result of the work undertaken will be investigated and perused where appropriate. Close links will be maintained with the Housing Options team to ensure that any enforcement activity does not have a negative impact on other areas of service delivery within the Council.

5. Constraints

Extra resources are required to undertake this project. This will also include the ability of legal services to undertake the additional case load that will be generated through the enhanced enforcement activity. As the team are already at capacity this may impact on other enforcement activity undertaken by the Community Safety Department. The ability to progress cases through

to prosecution either initially via the fast track process or through targeted activity is paramount to the success of the programme.

As part of the Government Red Tape Challenge there are some proposed changes to Housing Legislation. A consultation was also undertaken by Central Government in 2011 with regards to proposed changes to ASB legislation. The outcomes of both are still awaited, but it is anticipated that these will not significantly affect the viability of the programme. It is therefore assumed that there will be no other significant changes to either Housing or ASB legislation.

Due to the length of time required to investigate, prepare and then prosecute a case even if undertaken expediently, a non recurrent funding stream of 18 months to 2 year is required to progress a significant and prominent number of cases through to completion.

6. Assumptions

It is assumed that the post will be filled expediently with the appropriate skills set to enable effect enforcement activity to be undertaken with immediate effect.

It is also assumed that the proposed programme will not be affected by any other internal structural changes as a result of further budget constraints.

7. Outline Business Case/ Business Benefits

The Impact of poor quality and badly managed accommodation can be measured in terms of its financial impact upon services. With regard to the wider community it can be measured in terms of their perception of crime and disorder and our confidence to manage such issues.

Research undertaken by Shelter assessed the costs upon services related to poor housing conditions:

- for a basic police response to crimes related to poor housing conditions, plus the costs of burglary and criminal damage in these cases amount to **£200M per annum for public sector stock, and rises to £1.8B if private sector stock is included**. These costs exclude numerous other activities that stem from the initial crime: for example, costs of the court, prison and probation service; and physical and health costs resulting from the trauma of being a victim of crime.
- There is strong evidence that poor housing conditions result in educational under achievement, with children in better quality homes gaining greater numbers of GCSEs, 'A'levels and degrees, and therefore having greater earning power. Purely based on differences in GCSE results, **they calculate the bill amounts to £14.8 billion pounds in lost earnings forecast for this generation in poor housing**.

- Based on estimates of costs of GP consultations, associated treatments, hospital in-days and hospital out-day referrals where it was assessed that a prime causative factor for the ailment was housing related. It excludes loss of earnings and any other related forms of treatment or therapy (e.g. treatment at drug or alcohol rehabilitation schemes). **It is estimated it costs nearly £2.5 billion per annum.**

Although these figures are represented as national assessments, Torbay has a private rented housing stock that is higher than the national average and also has areas of extreme deprivation.

It is likely that the number of complaints received by the Private Sector Housing team is likely to increase over the next 12 months without some form of additional intervention. This is against a backdrop of potentially decreased resources across the business unit.

It is proposed that the time bound investment enables new working practices to be embedded within the team and a risk based prioritisation model to be implemented to enable efficiencies in the future. The positive publicity received from the programme will also allow cases to be resolved more efficiently as landlords will be more responsive to the requirements of legal notices.

8. Preliminary Risk Assessment

The programme is dependent on effective enforcement activity being undertaken. This is at risk if either there is limited capacity within legal services to take such action or prosecution files are not robust enough when presented.

At present all cases that are presented for prosecution are assessed through the departments Enforcement Panel to ensure that it is in the public's interest to peruse such action. All such cases will follow this level of scrutiny.

9. Project Tolerances

A minimum of an 18 month contract is required to ensure that a significant number of cases are progressed through to completion. This would cover the remainder of 2012/13 and 2013/14 financial years. A 12 month period would significantly reduce the impact of the project due to the time required to get cases listed at court and heard.

10. Acceptance Criteria

That all the customer expectations are met and project is delivered within budget and scope.

11. Outline Project Deliverable (Final Product)

1. A targeted programme of work has been delivered tackling those properties that have been identified as being of the worst quality in Torbay and that are being managed inappropriately.
2. That the risks posed to tenants through harassment or retaliatory evictions have been mitigated and their impacts upon other services limited.
3. That a higher proportion of the accommodation within Private Rented Sector has been assessed above the current based line of 10%.
4. A reduction in the number of repeat complaints about individual properties from the current base line in 2011/12 of 17%.
5. An increased in the level of confidence by the community on how ASB from private rented accommodation is managed and what is being done to tackle ineffective management. This will be assed through PACT surveys.

12. Outline Project Plan

The project would commence once a suitable person has been appointed. It is anticipated that this would take a minimum of three months if current redeployment practices are in place.

The first phase approach would commence immediately while analysis was undertaken to develop the second phase of the project in establishing the confidence in management assessment criteria. This would give the ability to prioritise and identify properties.

13. Review and Reporting

Robust performance criteria are required to ensure that the project is on track, with clearly identifiable milestones. Theses will be reported to the Community Safety Performance Board.

14. Financial/ Budget Requirements

One FTE equivalent would be required to undertake the targeted enforcement activity. This is costed at £44,000 including on costs per annum. It is requested that this would be none recurrent funding for the remainder of 2012/13 and 213/14.

Financial Year	Salary Cost	Support Costs (For either barrister or legal support if required)
2012/13	£26,000 (7 months)	£10,000
2013/14	£44,000 (12 months)	£15,000

15. Timing

The project would commence as soon as a suitable candidate had been appointed.

16. Additional Comment

Additional Information contained within Overview and Scrutiny Report, April 2012.



Title: **Article 4 Direction Restricting Permitted Development Rights to Change From Use Class C3 Dwelling to C4 Small Houses in Multiple Occupation (HMO)**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Adjourned Annual Council** On: **16 May 2012**

Key Decision: **Yes – Ref. 1008880** How soon does the decision need to be implemented **One year from date of decision to introduce an article 4 Direction**

Change to Budget: **Yes** Change to Policy Framework: **Yes**

Contact Officer: **Alistair Wagstaff**
 Telephone: **208848**
 E.mail: **Alistair.wagstaff@torbay.gov.uk**

1. What we are trying to achieve and the impact on our customers

- 1.1 This report is being put to Members because of increasing concerns about Houses in Multiple Occupation (HMOs) in Torbay. It considers their definition, extent and role within Torbay's housing market. It looks at concerns about the impact of HMOs on amenity, alleged anti-social behaviour etc and recommends the Council should prepare an Article 4 Direction removing permitted development rights to change from Use Class C3 Dwelling to C4 Small HMO, without the need for express planning permission.
- 1.2 In summary, this Report argues that the Private Rented Sector, including HMOs, is an essential source of cheap market housing in Torbay. There is no demonstrable link between licensable HMOs and anti-social behaviour, but concentrations of HMOs can impact upon the community with regards to general societal issues. Poor quality accommodation can affect ones health, employment and academic attainment.
- 1.3 It is therefore considered essential that there is proper control and management in planning terms available for the Council as Local Planning Authority to consider the change of use from C3 Dwelling House to C4 Small HMO.

2. Recommendation(s) for decision

That the Executive Head of Spatial Planning prepare an Article 4 Direction removing permitted development rights to change dwellings to small houses in multiple occupation (Class C3 Dwellings to C4 Small Houses of Multiple Occupation), without the need for express planning permission.

That 12 months notice be given prior to the Article 4 Direction taking effect, and that the Direction only be confirmed by the Council if sufficient resources are available to provide enforcement.

3. Key points and reasons for recommendations

- 3.1 A HMO is a building or part of a building that is being occupied as a main residence by more than one household. In Torbay there are approximately 14,000 private rented properties in Torbay of these 1,450 are HMOs and 83 licensable HMOs.
- 3.2 An over-concentration of HMOs can impede the creation of mixed and balanced communities, create concentrations of deprivation, and lead to amenity problems from noise, bins, parking etc.
- 3.3 Planning permission is required to use a property as a HMO for more than 6 unrelated persons. Planning permission is not required to use a dwelling house as a small HMO for between 3-6 persons. However, local authorities are able to issue Article 4 Directions to require small HMOs to obtain planning permission, as recommended by this report.
- 3.4 In view of the amenity concerns arising from a potential proliferation of small HMOs, it is recommended that an Article 4 Direction be prepared to require small HMOs to obtain planning permission. A number of options exist, including a Bay-wide or area based Direction. These are discussed in more depth in the supporting information section to this report. On balance, a Bay-wide Direction is considered to be simpler to administer than an area based one. Compensation is payable to people who are financially disadvantaged by an Article 4 Direction, unless 12 months notice is given. It is therefore recommended that the Direction should take effect after a year to avoid compensation claims.
- 3.5 **Resource Implications.** There are significant resource implications involved with planning enforcement of HMOs. The cost of issuing an Article 4 Direction is estimated at about £10,000, but effective enforcement of a Direction is estimated at 1-1.5 FTE posts. Issuing a Direction without adequate enforcement could be harmful, as it would deter law abiding landlords, whilst doing nothing to discourage the minority on unscrupulous ones.

For more detailed information on this proposal please refer to the supporting information attached.

**Les Crump
Executive Head Spatial Planning**

Supporting information

A1. Introduction and history

A1.1 **Definition of HMOs.** A HMO is a building or part of a building that is being occupied as a main residence by more than one household, i.e. unrelated people who do not live together as a family and share some facilities such as bathroom or kitchen. This report is specifically concern with the Use Class C4 HMO which includes properties where 3-6 un related residents reside as their main residence.

A1.2 Housing and Planning legislation categorise HMOs in different ways and different controls apply.

- Planning permission is required for HMOs of 6+ persons. Small HMOs (3-6 persons) do not need planning permission unless the Council introduces an Article 4 Direction to require them to obtain permission.
- The Housing Act 2004 defines licensable HMOs as 5+ occupants living in more than 1 household in buildings of three stories or more. However additional local licensing of smaller HMOs can be introduced if justified.

A1.3 **Extent of HMOs in Torbay.** There are approximately 14,000 private rented properties in Torbay - of these 1,450 are HMOs and 83 licensable HMOs. HMOs form about 2.3% of Torbay's housing stock, which is above the national rate of about 1.6%.

A1.4 **Role of HMOs in the Housing Market.** The private rented sector forms an important part of Torbay's housing market- forming about 22% of property in Torbay. HMOs are an important element of the rented sector, forming about 10.4% of it. Factors leading to a high level of HMOs in Torbay include:

- Shortage of affordable housing: 8% in Torbay compared to 18% nationally.
- Poor economic profile and wage rates.
- Large stock of larger Victorian properties, including former holiday accommodation that lend themselves to multiple occupation; coupled with a shift in Tourism demand away from small guesthouses.
- Cuts to benefits, particularly Housing Benefit allowances will increase the demand for shared housing.

A1.5 Nevertheless, an over-concentration of HMOs can impede the creation of mixed and balanced communities, create concentrations of deprivation, and lead to amenity problems from noise, bins, parking etc. In addition, HMOs may raise issues such as thermal comfort, fire and carbon monoxide safety management issues, which would primarily be dealt with through Housing Legislation. The shortage of suitable affordable housing means vulnerable people including, those with poor mental health and learning disabilities, are often housed in large, shared, privately rented properties. They are not always easily able to address issues of poor standards in the accommodation, or may be reluctant to do for fear of eviction.

A1.6 What Controls are available?

Control over HMOs falls primarily under planning and housing legislation.

A1.7 **Planning Controls.** Planning permission is required to use a property as a HMO for more than 6 unrelated persons. Planning permission is not required to use a dwelling house as a small HMO for between 3-6 persons. However, local authorities are able to issue Article 4 Directions to require small HMOs to obtain planning permission, This is recommended by this report.

A1.8 Planning permission is always required to convert non-residential uses such as hotels in to HMOs (of any size). However, properties sometimes lapse into HMO use without planning permission and effective enforcement is essential. A HMO is eligible for a Certificate of Lawfulness if it has existed for 10 years without enforcement action being taken.

A1.9 **Housing Controls.** Although not the subject of this report, it is worth noting that significant controls over HMO fall within Housing Legislation. Under the Housing Act 2004 mandatory licensed HMOs are properties of three or more stories providing accommodation for five or more people forming two or more households providing shared accommodation. Such properties require a licence issued by the local authority in order to operate.

A1.10 Local housing authorities are able to carry out additional discretionary licensing where there is a case to do so in terms of concerns about local housing management, concentrations of uses etc. Additional licensing can be used to extend the category of HMOs where a licence is required, whilst Selective licensing allows the local authority to select properties or areas it wishes to extend control over.

A1.11 **Option for action,** in view of the amenity concerns arising from a potential proliferation of small HMOs, it is recommended that an Article 4 Direction be prepared to require small HMOs to obtain planning permission. A number of options exist, including a Bay-wide or area based Direction. Whilst a targeted Direction could focus on the areas of greatest deprivation, it could lead to confusion and complexity. Moreover a targeted approach could create anomalies or push a proliferation of small HMOs into other areas of the Bay, therefore on balance, a Bay-wide Direction is considered to be simpler to administer than an area based one. Compensation is payable to people who are financially disadvantaged by an Article 4 Direction, unless 12 months notice is given. It is therefore recommended that the Direction should take effect after a year to avoid compensation claims.

A1.12 **Resource Implications.** There are significant resource implications involved with planning enforcement of HMOs. The cost of issuing an Article 4 Direction is estimated at about £10,000, but effective enforcement of a Direction is estimated at 1-1.5 FTE posts. Issuing a Direction without adequate enforcement could be harmful, as it would deter law abiding landlords, whilst doing nothing to discourage the minority on unscrupulous ones.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 Providing access to good quality homes is critical for people's quality of life, health and other 'life chances' and the creation of supportive neighbourhoods. A significant element of Torbay's housing need will inevitably be met in the private rented sector, including HMOs. The majority of private landlords provide a useful and essential service. Seeking to restrict this sector unduly could lead to a worsening of conditions for the poorest and most vulnerable people in Torbay.

A2.1.2 A delicate balance needs to be struck between providing lower-end of the market accommodation and the creation of mixed and balanced communities. Torbay has a large private rented sector. Presenting an affluent image, with high quality accommodation is essential to Torbay's role as a tourist resort.

A2.1.3 Preparing and enforcing Article 4 Directions is relatively inexpensive, but could be time consuming. Planning applications for small HMOs are exempt from planning fees, but could present controversial planning issues.

A2.1.4 An Article 4 Direction would not apply retrospectively (i.e. it cannot be applied to existing HMOs). However, where the status of a HMO is in doubt, a Certificate of Lawfulness could be sought, which does attract a planning fee.

A2.1.5 There is a risk that preparing an Article 4 Direction could lead to a rush of properties being converted to small HMOs, in order to avoid being caught by the Direction. However, experience from other areas that have introduced Article 4 Directions suggests that this has not been a particular problem

A2.1.6 If an Article 4 Direction were to be introduced with less than 12 months notice, then compensation would be payable to people who suffer as a result. In practice this would mean compensating landlords for loss of rents if an application were refused. There could also be possible compensation/need to find alternative accommodation for people made homeless. It is estimated (based on lost rent) that the cost of compensation would be about £11,000 per small HMO; i.e. 10 successful claims would cost about £110,000. Therefore, it is recommended that a 12 month notice period be given.

A2.2 Remaining risks

A2.2.1 Enforcement of problems relating to HMOs is essential. It achieves nothing to introduce new controls on HMOs if there is not an ongoing resource and political will to enforce them. There is currently no budget available to meet the additional costs arising from an Article 4 Direction and its enforcement. The recommendation is that a Direction be prepared, but not brought into force, if it appears that resources are not available (or prioritised) to enforce it. It is noted that relying on reactive enforcement will pick up problem HMOs through neighbour complaints.

A2.2.2 The regulatory regime must be sufficiently user friendly so that prospective good landlords are not deterred.

A3. Other Options

- A3.1 Taking a hands-off approach to small HMOs would minimise the need for enforcement action on these. This would allow scarce resources to be focussed on enforcing existing powers, e.g. relating to unauthorised larger HMOs..
- A3.2 The Government has granted permitted development rights for small HMOs, and councils should be circumspect about removing these. However, Torbay has a difficult housing situation like many resorts, and an increase in the number of small HMOs could significantly worsen the area's economic profile, and harm the character of tourism areas. Most similar seaside resorts to Torbay have taken the view that controlling small HMOs through Article 4 Directions is justified

A4. Summary of resource implications

- A4.1 It is estimated that preparing an Article 4 Direction would be about £10,000 in terms of printing, notices and officer time. Officer time is likely to be the major resource needed. This figure is corroborated by work carried out by Plymouth City Council. Plymouth City Council also estimate that enforcing an Article 4 Direction would require 1-1.5 additional FTE Posts (£39-59k including on-costs). As noted above, planning enforcement is essential in dealing with HMOs, although relying on reactive enforcement could identify the most problematic properties.
- A4.2 A planning application fee cannot be charged for small HMOs. However, proactive enforcement of HMOs could earn some fees, for example from certificates of lawfulness, or planning applications for larger HMOs. It is possible that s106 contributions could be sought from HMOs, so long as this is directly related to mitigating their impact (e.g. waste or parking management).

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A5.1 HMOs provide an essential form of lower-end -of-the-market accommodation, and Government clearly expects the private rented sector to meet a need for shared housing. They are not normally affordable housing, because the landlord receives the full market rent.
- A5.2 Increasing controls over HMOs is likely to impact most heavily upon young single people under 35, and middle aged men e.g. undergoing family breakdown. However, improving the quality of HMOs will also make them safer for example by improving thermal comfort and reducing fire and carbon monoxide risks.
- A5.3 Whilst an Article 4 Direction would mean that uses such as small care homes or refuges could require planning permission, such proposals could be dealt with discreetly where vulnerable people are involved. There are not thought to be any direct ethnic minority, sexuality or transgender impacts.

A6. Consultation and Customer Focus

A6.1 This report seeks Member to authorise the preparation of an Article 4 Direction, this will require formal consultation. Agreeing to prepare a Direction would not commit the Council to enacting it, should consultation responses indicate this to be undesirable.

A7. Are there any implications for other Business Units?

A7.1 Article 4 Direction will primarily affect Spatial Planning. There are less direct links to Community Safety, Supporting People and Housing Benefits and the Torbay Development Agency.

Appendices

None

Agenda Item 16



Title: **Innovation Centre 3rd phase**
Public Agenda Item: **Yes**
Wards Affected: **Blatchcombe**
To: **Adjourned Annual Council** On: **16 May 2012**
Key Decision: **Yes**
Change to Budget: **Yes** Change to Policy Framework: **No**
Contact Officer: **Alan Denby**
Telephone: **01803 208671**
E.mail: **Alan.denby@tedcltd.com**

1. What we are trying to achieve and the impact on our customers

- 1.1 This report is seeking to promote sympathetic economic regeneration for Torbay by building a new innovation centre at Whiterock Business Park, Paignton creating 30,000 square feet of new workspace for businesses. In delivering this project an estimated 220 gross new jobs will be created with additional value to the local economy in excess of £2 million per annum.
- 1.2 Specific Community Plan indicators that the project will contribute to include;
- Increase value and improve economic performance of key sectors
 - Encourage appropriate and sympathetic diversification of the economic base
 - Provide business and infrastructure support for economic growth and job creation

2. Recommendation(s) for decision

Decisions for Council

- 2.1 That, in principle, the Council supports the development at White Rock Business Park, Paignton to enable the delivery of the third site of the Innovation Centre Programme, using up to £2.5 million of funds. These funds to comprise of up to £500,000 of New Growth Points grant allocated to the project and the balance will be funded from prudential borrowing. Initial funding to be met from internal funds in line with the Treasury Management Strategy approved by Council.
- 2.2 That the Council submits an application to the EU Competiveness programme for a further £2.5 million grant.

The Mayor be Recommended to:

- 2.3 That subject to satisfactory terms being agreed, the Council enters into a land swap with Deeley Freed. The Council to transfer the PLUSS site at Whiterock in return for the transfer of Deeley Freed's site fronting onto Brixham Road.
- 2.4 That the Council retains the freehold of the site on which the new innovation centre is to be built but leases it to the Torbay Economic Development Company Limited. The length and terms of the lease to be delegated to the Chief Executive in consultation with the Mayor, the Executive Lead for Finance and Audit and the Chief Executive of the Torbay Economic Development Company.

3. Key points and reasons for recommendations

- 3.1 The recommendations in this report ask that the Council provides £2.5m of funds to deliver the third phase of the Innovation Centre project which is estimated to cost £5 million. The scheme will provide, at the Whiterock Business Park, a building of 30,000 square feet with 23,500 square feet of lettable space. The space will create and sustain an estimated 220 jobs and an additional £2m per year of economic benefits to Torbay.
- 3.2 The existing Innovation Centre sites at Vantage Point (Paignton) and Lymington Road (Torquay) cover approximately 13,000 square feet and provide space to 42 businesses. In the past year 80 jobs have been created and since the centres began operating in 2006 this number is over 300 jobs. The occupancy rate for the centres is in excess of 85% which exceeds the expected level for this type of facility.
- 3.3 The site and building would be leased to the Torbay Economic Development Company Ltd (TEDC). The detailed business plan for the project will be considered by the board before the end of July and presented to the Council. The company would pay an annual charge that would cover the Council's borrowing and repayment costs of borrowing, estimated at £70,000 per million.
- 3.4 Torbay is an eligible area for European Regional Development Fund under the current EU Competitiveness programme. Approval of these recommendations will see the TEDC prepare a grant application on the Council's behalf. If approved this would bring a grant of £2.5M in support of the scheme to be matched by the New Growth Points grant and borrowing. The initial funding will be from internal funds in line with the treasury management strategy approved by Council.
- 3.5 Should the grant application not be approved then the proposal will not proceed and a further report would be brought to Council to consider any alternative options.
- 3.6 The extent of support for start up businesses will create a pipeline of demand that will be attracted to space offered through the Innovation Centres. This will be complemented by an active inward investment programme. This third phase will also provide growth on space for tenants and high quality space particularly for businesses in the following sectors;
 - Electronics & photonics
 - Creative sectors

- Medical technologies
 - Professional & financial services
- 3.7 The award of funding to the South Devon Link Road and the evidence that was presented to Government on the economic benefits to Torbay means it is important that the Council continues its strong commitment to economic growth.
- 3.8 The planning process for the Whiterock Business Park site highlighted community wishes to ensure that the development was employment led. The Council, as planning authority, has taken steps to ensure that the developer provides workspace and these recommendations complement that so that the scheme represents employment led regeneration.
- 3.9 The recommendations support the Council's aspiration for sympathetic regeneration and the project will widen opportunities and provide high quality employment which in turn retains our young people in the Bay.
- 3.10 The need for sympathetic economic regeneration is supported by a host of statistics and national indicators such as on productivity, wage levels, child poverty, jobseekers allowance and business growth. The opportunity here relates to supporting the strong high value sectors in Torbay which include professional and financial services, electronics and creative businesses.
- 3.11 The project will help to improve Torbay's economic performance. In turn this improvement to economic performance will reduce child poverty, reduce the cost of deprivation to the public sector, improve job opportunities and encourage our young people to remain in the Bay. Specific community plan indicators that the project will contribute to include;
- Increase value and improve economic performance of key sectors
 - Encourage appropriate and sympathetic diversification of the economic base
 - Provide business and infrastructure support for economic growth and job creation

For more detailed information on this proposal please refer to the supporting information attached.

Steve Parrock
Chief Executive Torbay Economic Development Company Ltd

Supporting information to Report

A1. Introduction and history

A1.1 The Torbay Economic Development Company (TEDC) operates two Innovation Centres through the South West Innovation Centres banner. It also manages the Cockington Court Craft Centre and the Watermark Centre in Ivybridge.

The concept of the innovation centre is to nurture small companies and help them grow, creating and sustaining new wealth and employment for local economies. The creation and growth of small businesses is a strong indicator of an entrepreneurial culture in a place. It is likely to result in additional jobs growth in future years as economies with many small growing businesses demonstrating consistent jobs growth over economies dominated by large employers.¹

There some 4,600 VAT/PAYE registered businesses in Torbay. On an annual basis new start businesses equate to between 8-10% of that VAT number meaning that there are 350-450 new businesses starting in Torbay each year. This is a real asset for Torbay to build on and is in part driven by the strong performance of Outset Torbay² as they deliver the European funded start up business advice and the delivery by the TEDC of the new enterprise allowance programme which has seen 47 clients since summer 2011. The EU funded enterprise coaching and intensive start up support activities will be delivered until 2014 under the current programme. This complements the programme for this project.

The TEDC works with a number of partners to provide flexible and low-cost business premises and access to a range of support services. Studies prove that this is a combination which substantially increases new business survival rates. The TEDC currently manage Centres in:

- Paignton - Opened in November 2006, this Centre operates from a self contained suite of offices on the Ground Floor of the outstanding £28m South Devon College. Torbay Council through the Torbay Development Agency spearheaded the establishment of the business units, and obtained funding from the SWRDA, match-funded by the Government Office South West through the European Objective 2 scheme.
- Torquay - Launched in November 2008, this Innovation Centre operates from a purpose-built complex close to the heart of Torquay. Torbay Development Agency secured funding of £1.5m from the SWRDA to enable the new centre to be constructed. Another £600,000 came from the Government Office South West through the European Objective 2 scheme. Additional finances were made available from the Single Regeneration Budget and Torbay Council.

¹ This is borne out by data from Business, Innovation & Skills and supported by the Harvard Business Review & Kauffman Foundation

² Delivered by Outset Torbay and reported to have seen over 560 individuals start the Outset programme

The original business case set out an overall requirement for a minimum area of 30,000 square feet in order to generate the rental income to cover the support costs. For a number of reasons, principally related to the availability of funding and decisions made by partners, the sites which came forward at Vantage Point and Lymington Road do not provide the quantum of space to allow the centres to operate optimally.

The two centres give a total of around 12,000 sq ft and therefore the centres while full are not delivering the full benefits that a larger centre would. They also have a higher level of overhead than originally envisaged. The third phase innovation centre is therefore critical to the overall business plan.

The existing sites have delivered consistently high occupancy notwithstanding the occasional fluctuations in the challenging economic climate. Occupancy rates have been over 90% for much of the period of operation giving confidence in the ability of the TEDC to let a greater amount of space. They have also delivered against the predicted outputs required by the funders and are acknowledged as a success.

This proposal for the third site, which would be located at Whiterock Business Park as part of the recently consented development, capitalises on that success. The Whiterock Business Park is estimated to create over 1200 jobs. The White Rock scheme includes 350 new homes, a 36,800m² industrial estate, a supermarket, student accommodation as well as sports facilities, new roads and 15 hectares of landscaped open space.

This report would enable a 30,000 square foot Innovation Centre with dominant road presence as part of the Whiterock Business Park. Negotiations on a site have begun. The site is part of the Whiterock outline planning application area the innovation centre site is part of the district centre at the front of the site and proposed neighbours include a food store, motel and pub. It would be adjacent to the South Devon College Energy Centre which is offering pre start up and incubation space for those thinking about starting a business and is therefore well positioned to capitalise on those links.

Part of the outline planning process has established a footprint and indicative floor plans and elevations for the building. The TEDC propose a scheme that fills the identified footprint and should be around 30,000 square feet. This would result in around 23-25,000 sq ft net lettable space. It is expected that the design of the building will provide a mix of accommodation types ranging from fully serviced office units, in multiples of 25 sq m (net) nominal size, to light industrial units in multiples of 50sq m net nominal size, to cater for businesses in fields such as health, science and technology.

Costs & Funding

The costs of the Innovation Centre have been estimated at £5m. This is in part shaped by the likely available capital funding which is as follows;

- Up to £2,500,000 from Torbay Council comprising up to £500,000 of New Growth Points grant funding with the balance coming from prudential borrowing
- £2,500,000 from the EU Competitiveness programme 2007-13 offering match at 50%
- TEDC will continue to seek to identify other funding options that might come forward and reduce the funding requirement for Torbay Council.

Assuming 23,000 of lettable space and an average rent of £20 per square foot (this is lower than rents achieved at Vantage Point & Lymington Road) the maximum rental roll would be £460,000. Financial projections for the centre demonstrate that occupancy of 72% allows for breakeven and levels above that deliver a surplus. The projections below are deliberately conservative on occupancy rates but provide an indication of the occupancy and associated income that could be expected.

	2013/14	2014/15	2015/2016	2016/2017	2017/2018
Occupancy	15%	40%	60%	70%	80%
Income	£71,124	£189,560	£283,794	£331,063	£385,893

Experience of the other centres has been that occupancy rates have been higher than expected and the TEDC is confident of being able to deliver to this model. This confidence is based on track record but also the marketing that will be undertaken by Deeley Freed for Whiterock, the wider inward investment promotion for Torbay which is seeing enquiries for space that currently cannot be met and the demand forecast to be generated by the South Devon Link Road which is expected to result in over 3,000 new jobs for Torbay.

With regard to the EU Competitiveness funding the SW Regional Development Agency allocated £5m for activities in Torbay in support of starting up businesses and social enterprises. Currently Torbay stands to receive approximately £4.5 million from the allocation. Should the recommendations in this report be accepted then a bid for £2.5 million will be made to the programme and is considered to have a strong probability of success and will see Torbay receive a sum in excess of its original allocation.

The Deal – Whiterock

Provisional terms have been agreed with Deeley Freed on behalf of Abacus for a straight swap of their land (4230 square metres) for the Council building currently occupied by PLUS Ltd (4091 square metres). Both land areas are very similar. The proposed site for the innovation Centre has Brixham Road frontage and will be a very visible building sitting next to the new Premier Inn. The proposed site has a minded to grant outline planning approval for 30,000 square feet of office space. This site is an ideal location for the Innovation Centre and is well located to fill, the immediate frontage of the Business Park and also close to the

proposed energy centre to be developed by South Devon College. The estimated value of the site is around £500,000 given comparable information provided by the developer. The market value would likely be a little lower given current office rents. The detailed business case will consider all tax implications from this transaction.

PLUS – Site & Loan issues

This building has an estimated value of around £450,000 although this is to be tested externally and valued by the District Valuer to confirm and this will be in place before committing to contract. The deal is a straight swap. There will be an obligation to sell the (swapped) site back to Abacus within 2 years if funding is not secured. The price to be paid will be market value at the time of the transaction. This is a good mechanism and a way by which the Council can extract market value quickly should a funding package for the innovation centre not be secured.

PLUS has been occupying Council premises at Waddeton Close, Whiterock for some time, providing supported employment services to adults with learning disabilities. The Council owns 25% of the PLUS company. PLUS supports thousands of disabled people each year to achieve work and a career. The Council's funding for supported employment and contract with PLUS has been renegotiated and the premises will be vacated before the end of this year.

The other issue to be addressed with the PLUS building is that a loan was received by Devon County Council, with the Council inheriting the liability for, along with the site in 1998 for improvement and refurbishment works. It is likely that a repayment of up to 75% of the market value of the PLUS site will be required to the Department of Work & Pensions, however confirmation of the amount that will be required is being sought. This sum will need to form part of the business case.

The Deal – Contingency

There are a number of risks in regard to the deal aspect alone. TEDC intend to seek a detailed planning permission at the PLUS building as well. TEDC will aim to exchange contracts as soon as the Council has given the authority to proceed. The exchange will be conditional on PLUS vacating the property.

Programme

It is anticipated that TEDC will be applying for detailed planning permission in June, securing the funding in July and starting on site in December 2012 with Practical Completion in December 2013.

Benefits

It is estimated that there would be economic benefits in the order of 227 gross new jobs, around 145 net new jobs and a gross value added to the local economy of over £2 million per annum. Over the economic life, which is modelled using Government appraisal guidance, of the project the benefits are estimated at over £20M providing a cost benefit ratio for the scheme of 4:1.

Delivery of the business growth programme will therefore respond to strategic direction from Torbay and market opportunities. It is expected that delivery of the programme will achieve the following benefits for Torbay

- Improved business survival and growth rates
- Improved public finances
- Increased employment
- Increased demand for business growth services
- Increased awareness of finance, export and innovation measures

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 That demand for space has been overinflated – this is considered to be low risk based on the occupancy rates experienced at other sites, the sustained demand reported through property enquiries dealt with by the TEDC, the continued delivery of the inward investment campaign, the business start up programme and the forthcoming commencement of the South Devon Link Road.

That the running costs exceed income – the business case for the proposal has been tested against historical charges and income from existing TEDC sites and other costs have been checked to ensure accuracy. This is a moderate risk with low probability but major consequences. The business case makes conservative predictions about the rental level that would be attainable and about the occupancy rates assuming full occupancy in year 3-4, historical performance has been in excess of this.

To mitigate this risk a detailed business plan will be submitted to the Chief Executive and the TEDC board prior to the project starting to ensure the business case is robust and the TEDC can afford to repay the Council funding.

That planning consent is not received – preliminary discussions have been held with Planning Officers to understand the issues that might prevent a positive recommendation for approval. The in principle consent for the overarching Business Park scheme means this is low risk.

That the funding application for ERDF grant is unsuccessful – extensive discussions have taken place with programme officials to brief them of the project and to gain an understanding of their likely support. Presently those officials are concerned about match funding and planning permission, approving this report will satisfy one of those concerns. It is currently a high risk and would drop to low if the recommendations here are accepted.

A2.2 Remaining risks

A2.2.1 None

A3. Other Options

A3.1 Take no action – this would result in the current position being maintained with regard to space for growing businesses. It would not be consistent with the Council's aspirations for sympathetic regeneration and jobs led growth.

To seek a smaller site – Seeking a site of 10-15,000 square feet. This would have a marginal impact on the overall performance of the Innovation Centres because one of the principal issues is the overall quantum of space, there would be limited benefit and support to the growing numbers of small businesses that are seeking space.

To seek alternative funding options – Regional Growth Fund was bid for in the summer of 2011 to bring the scheme forward however the bid failed to gain support. The abolition of the Regional Development Agency has meant that the Growth Fund is the only UK government fund to support local and regional economic growth.

A4. Summary of resource implications

A4.1 Borrowing of £2m is assumed to cost £140,000 at £70,000 per million. The Council would not be expected to bare any additional costs as a result of this report however with the TEDC making a payment to the Council to cover the annual borrowing costs. In the event that the TEDC was unable to sustain the payment or ceased to exist by retaining the freehold the Council would retain security over its investment.

A4.2 There will be business rate benefits to the Council from the space. While these have yet to be confirmed the project has an assumed opening date of spring 2014 and a three year period before the space is full. At that point business rates, estimated at £90-110,000 per annum, will make a positive contribution towards the Council increasing the amount of business rates collected locally.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There will be no negative impacts for equalities and crime & disorder as a result of this report being taken forward. The project is expected to contribute to the growth of businesses and increasing demand for employment which in turn will have a positive impact on equalities in line with other Council and TDA activities to support people gaining employment.

A5.2 The scheme will be designed using appropriate BRE Environmental Assessment Method targets to ensure that the project has a minimal impact on the quality of the local environment.

A6. Consultation and Customer Focus

A6.1 Demand for the kind of space and business support proposed has been highlighted through the regular Business Barometer survey. 89% of businesses questioned identified the need for improved business performance as a priority for Torbay. The Innovation Centre and business support which goes with it are essential in delivering this.

A6.2 The support currently available is valued by businesses, further highlighting that they would see an extension of this as a positive step. When asked what their overall impression was of Torbay as a place to do business responses included: "I have received good business support from the Torbay Development Agency" and "Outset Torbay is a very effective agency and helps business start-ups

which is very useful for my clients”

A7. Are there any implications for other Business Units?

A7.1 There will be an impact on Financial services through the borrowing that will be required for the scheme.

Appendices

None

Documents available in members’ rooms

None

Background Papers:

The following documents/files were used to compile this report:

TEDC Business Plan 2011
Torbay Economic Strategy
Torbay Community Plan



Overview and Scrutiny Annual Report 2011/2012

Members of the Overview and Scrutiny Board

Councillor John Thomas (Overview and Scrutiny Co-ordinator)
Councillor Neil Bent (People Scrutiny Lead)
Councillor Mark Kingscote (Place Scrutiny Lead)
Councillor Ruth Pentney (Business Scrutiny Lead)
Councillor Jane Barnby (Health Scrutiny Lead)
Councillor Dave Butt (until 3 February 2012)
Councillor Steve Darling
Councillor Ray Hill (from 3 February 2012)
Councillor Julien Parrott
Councillor Mark Pountney (from 26 July 2012)

Members of the Health Scrutiny Board

Councillor Jane Barnby (Chair)
Councillor Neil Bent (from 18 July 2011)
Councillor Stephen Brooksbank (until 18 July 2011)
Councillor Bobbie Davies
Councillor Ian Doggett
Councillor Matthew James
Councillor Beryl McPhail
Councillor Julien Parrott
Councillor John Thomas

Foreword

I have been privileged to yet again act as Overview and Scrutiny Coordinator and Chairman of the Council's Overview and Scrutiny Board during 2011/2012.

This is the first Annual Report since the local elections held in May 2011 and, as you may be aware, all local authorities across the country have been subjected to swingeing reductions in their funding from Central Government. Torbay Council is no different and as a consequence, your Council will have to find up to 28% in spending reductions on the services that it provides in the four years commencing 2011.

This has inevitably meant that every one of the 700 different services that your Council provides have inescapably had to come under the microscope. Your Overview and Scrutiny Board represents your interests in the Council and exists to hold the Mayor and Executive Leads to account on all matters including the budgetary decisions that they make. Your Overview and Scrutiny Board has therefore set as a key theme for its review of spending cuts, the protection of the vulnerable and the disadvantaged in the

Bay. Your Board has held the “budget makers” to account on every item that has been affected by the inescapable reductions in funding and have managed to reinstate or reduce some of the reductions, or reallocate the reductions to alternative areas of activity that may be considered to have a lesser effect on the public.

This does not make for an easy life as the reality is that there are few areas of Council activity that can escape some reduction in financial support.

Sadly, the cuts that have been made in the past two years are only the start of the journey as further cuts are certain in the two years ahead of us.

I wish to express my appreciation to all elected members who sit on the Overview and Scrutiny Board and for the many reviews that they have undertaken with skill and in forensic detail in a particularly difficult financial environment. This Annual Report gives but a glimpse of the work that has been undertaken by your Board and I commend it to your reading.

Finally, should you at any time have a subject that you feel would be worthy of review by your Board please do contact the Overview and Scrutiny Team at the Town Hall.

Councillor John Thomas
Overview and Scrutiny Co-ordinator

Overview and scrutiny...

- is one of the ways the Council improves services and the quality of people’s lives in Torbay
- acts as the Council’s “watchdog” and challenges decisions taken by the Mayor and looks at decisions in more detail
- reviews existing policies and issues of concern
- is a constructive and independent way of looking at an issue, highlighting areas that work well and suggesting where improvements can be made

This report gives details of some of the work undertaken by the Overview and Scrutiny Board and the Health Scrutiny Board since May 2011.

Anti-Social Behaviour and Private Sector Housing

A review panel was established with the objectives of gaining an understanding of the anti-social behaviour issues associated with private sector housing, to identify the underlying issues and contributing factors and to examine the range and effectiveness of the policies and initiatives aimed at tackling and reducing anti-social behaviour.

The review panel heard of changes in how anti-social behaviour was tackled in Torbay, the various initiatives which were in place to tackle the issue and the recognition of this work through the award of a Purple Flag for Torquay town centre.

In conclusion, the panel found that there was excellent proactive and reactive work being undertaken to minimise the impact of anti-social behaviour and to tackle poor

quality accommodation although the reduced resources available were a limiting factor.

The panel will present a business case to the Mayor for further targeted intervention to address some of the hotspots in Torbay.

Levels and appropriateness of methylphenidate (including Ritalin) prescribed for children and young people in Torbay

The Overview and Scrutiny Board supported a Councillor Call for Action raised by Councillor Parrott on the prevalence of Ritalin prescription in Torbay. The request was made as there was a research proven link between socio-economic group, incidences of ADHD diagnosis and the prescribing of methylphenidate (including Ritalin). The British Psychological Society had stated that poverty and unemployment are amongst the biggest causes in such cases. Councillor Parrott hoped that, given the levels of deprivation in some parts of Torbay, the national correlation between social struggles and Ritalin prescription would not be present within the area.

The Director of Public Health presented a report to the Board which gave background information and answered the specific questions which had been raised. The report concluded that diagnosis of ADHD and treatment is undertaken in Torbay by consultant-level medical staff in line with current national guidelines from NICE. Treatment may include Ritalin but this is not the only regimen available.

It was noted that there is no data available in Torbay on total population prevalence or numbers diagnosed or medicated that could be used for comparative purposes and that this data is not collected in other areas. A review of the literature had been used to provide potential parameters for the Torbay population and that there was no evidence that Torbay exceeds these parameters.

Budget Scrutiny 2012/2013

The Overview and Scrutiny Board undertook budget scrutiny over a number of meetings in January where Executive Leads and officers were challenged about their proposals for the forthcoming year. Members of the public were also invited share their views at these meetings.

Health Scrutiny

The Health Scrutiny Board continued to monitor the implementation of planned service changes at Ocombe House and the John Parkes Unit. The Board also received reports on the establishment of regional networks for trauma care and the progress of the personalisation of health and social care in Torbay.

Plans for next year

The Work Programme for 2012/2013 will be developed to take account of where overview and scrutiny can add the most value.

The principles of good scrutiny will remain the framework by which the Board operates.

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
4. drives improvement in public services

Involvement

- Let us know your views – use the contact details below
- Keep up to date – check out our website at www.torbay.gov.uk/scrutiny
- Join our Community Pool – be sent regular news from scrutiny and have the opportunity to become involved with reviews – again, use the contact details below

Contact Us

Telephone: 01803 207063

Email: scrutiny@torbay.gov.uk

Address: Overview and Scrutiny
Torbay Council
Town Hall
Torquay
TQ1 3DR

Web: www.torbay.gov.uk/scrutiny

If you want to know more about overview and scrutiny at Torbay Council then please feel free to contact the Team.

Agenda Item 20



Title: **Report on an Investigation into Complaint No 10 002 564
Against Torbay Council**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Adjourned Annual Council** On: **16 May 2012**

Contact Officer: **Anthony Butler**

☎ Telephone: **7155**

✉ E.mail: **anthony.butler@torbay.gov.uk**

1. **What we are trying to achieve**

- 1.1 Following a complaint from Mr Castle (a false name used by the Ombudsman in their reports) to the Local Government Ombudsman, a finding of maladministration causing injustice has been found against the Council.
- 1.2 The Ombudsman report is required to be reported to the Full Council.

2. **Recommendation(s) for decision**

- 2.1 **That the contents of this report and its appendix be noted and that the Chief Executive be requested to respond on behalf of the Council to the Local Government Ombudsman in consultation with the Mayor and Group Leaders**

3. **Introduction and History**

- 3.1 The Local Government Ombudsman received a complaint that the Council took bankruptcy proceedings against the complainant in response to a Council Tax debt of £2,248 without having proper regard to the personal circumstances of the complainant..
- 3.2 In the initial report dated 4 May 2011 the Ombudsman concluded that the Council had not followed due process in making Mr Castle bankrupt. The Ombudsman found the Council failed to document its decision making in respect of the recovery action by way of bankruptcy and failed to reconsider its decision to pursue bankruptcy when information came to light that Mr Castle might be considered suicidal. As such the Ombudsman considered that had such failings not occurred the Council would not have continued with the bankruptcy proceedings against Mr Castle and he would not have incurred the high punitive costs of £24,000 associated with that action.

- 3.3 The Local Government Ombudsman's initial report was presented to Full Council on 13 July 2012 and on 12 August 2012 the Chief Executive responded to the Ombudsman and Mr Castle to inform them of the decision not to pay the compensation recommended by the Ombudsman. The letter to Mr Castle offered a payment of £1,000 in recognition of the Council's maladministration in its failure to keep full records.
- 3.4 On 16 November 2011 the Local Government Ombudsman and her deputy met with the Chief Executive, the Mayor and the Executive Head Commercial Services to discuss the Council's response to the Ombudsman's initial report. On 25 January 2012 the Ombudsman sent a letter to the Council upholding the original decision. The Chief Executive responded on 14 February 2012 with further comments.
- 3.5 The Council has now received the further report on the complaint dated 28 March 2012 upholding the original decision and asking the Council to reconsider its decision to not to pay the compensation recommended in the original report which is the reason for this report being brought to full council.
- 3.6 The original and this further report have been considered in detail by the Executive Head of Commercial Services. She does not believe that the Ombudsman has sufficiently appreciated the points made within our letter of 14 February 2012. In particular, it is believed that the Ombudsman has failed to fully appreciate s.1(2) of the Mental Capacity Act 2005 which provides that a person must be **assumed to have capacity unless it is actually established that they lack capacity**. The Council, through its agents made extensive efforts to contact Mr Castle. Whilst some of these visits raised a level of concern as to Mr Castle's wellbeing there was no evidence that actually established that he lacked capacity. Guidance and legal commentary on the Mental Capacity Act make repeated reference to the fact that it must not be assumed that a person lacks the mental capacity needed in any given situation just because, for example, the person has a disability or mental health problem. In the absence of actual evidence that Mr Castle lacked capacity, and in accordance with the legal position as set out above the Council had to proceed on the basis that Mr Castle had capacity to manage his property and affairs. Whilst there was a level of concern raised as to Mr Castle's wellbeing, these did not amount to an evidential basis upon which the Council could have made a decision to write off the debt. The Council commenced bankruptcy proceedings, and to have done otherwise would not have been fair to the other residents of Torbay.

For more detailed information on this proposal please refer to the supporting information attached.

**Anthony Butler
Monitoring Officer**

Supporting information

Appendices

Appendix 1 –

Local Government Ombudsman's Report dated 4 May 2011

Letter to Local Government Ombudsman from the Chief Executive dated 12 August 2011

Letter from Local Government Ombudsman to the Council dated 25 January 2012

Letter to Local Government Ombudsman from the Chief Executive dated 14 February 2012

Local Government Ombudsman's further report dated 28 March 2012

Report

on an investigation into
complaint no 10 002 564
against Torbay Council

4 May 2011

Investigation into complaint no 10 002 564 against Torbay Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr Castle	-	the complainant
Mr Knight	-	bailiff
Mr Ash	-	a process server, employed by the bailiff
Officer A	-	Deputy Head of Customer Contact, at the time of the events complained of
Officer B	-	Senior Exchequer Officer, at the time of the events complained of

Report summary

Local taxation

Mr Castle complains that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

The Ombudsman does not consider the Council followed due process in making Mr Castle bankrupt. First, she finds that the Council failed to document its decision-making in respect of the recovery action by way of bankruptcy. Second, she finds that the Council failed to reconsider its decision to pursue bankruptcy when information came to light that Mr Castle might be considered suicidal.

The Ombudsman considers that had such failings not occurred then the Council would not have continued with bankruptcy proceedings against Mr Castle and he would not have incurred the high punitive costs of some £24,000 associated with that action.

Finding

Maladministration causing injustice.

Recommended remedy

In order to put Mr Castle in the position that he would have been in had no maladministration occurred, and taking account of both the financial costs incurred and the distress and time and trouble caused, the Ombudsman recommends that the Council issues Mr Castle with a formal apology and makes him a payment of £25,000.

Introduction

1. Mr Castle complained that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

Legal and Administrative Background

My Jurisdiction

2. There are a number of sections of the Local Government Act 1974 (as amended by the Local Government and Public Involvement in Health Act 2007) which fall to be considered in reaching a decision on whether I have jurisdiction to consider Mr Castle's complaint.
3. First, Schedule 5 paragraph 1 of the Act says that a Local Commissioner cannot conduct any investigation into

"the commencement or conduct of civil or criminal proceedings in any court of law".

However, this does not preclude an investigation into administrative actions prior to the issue of court proceedings and, where the Council instructs agents for enforcement of court orders, the actions of those agents (unless they are agents of the Court).

4. Second, Section 26(6) of the Act says that -

"A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,

- (c) any action in respect of which the person affected has or had a remedy by way of proceedings in any court of law:

provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person affected to resort or have resorted to it."

5. I interpret this to mean that I have no jurisdiction to consider a complaint where court proceedings have been issued by the complainant in respect of the same matter. However, I retain jurisdiction to investigate if such Court proceedings were misconceived; that is where there was no legal basis for bringing the action.

6. Third, S26B of the Act says that a complaint should be made to me within 12 months from the day when the complainant first had notice of the matter. However, S26B(3) provides that I may disapply this requirement.
7. In a previously published report by the Local Government Ombudsman (reference 06B16600) on an investigation into a complaint against Wolverhampton City Council the Ombudsman found that the council made a man bankrupt over non-payment of his council tax, without fully considering all the alternatives. The Ombudsman found that the Council failed to consider the possibility of making a charging order against the man's home. It also gave him inadequate warning of the consequences of bankruptcy before commencing proceedings. The man faced costs of £38,000 for a debt of £1,105. The Ombudsman said: "The Council cannot, it seems to me, turn a blind eye to the consequences to the debtor of any recovery option it pursues. ... The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over and frequently incurring the loss of the debtor's home, must be a factor to be taken into account in deciding that the 'last resort' is indeed appropriate".
8. This decision was applied by the court in *Hunt v Fylde BC* [2008] BPIR 1368. Because of illness, Mr Hunt had withdrawn from the world and adopted an aggressive response to any attempt to assist. The Council had known about the debtor's condition, but District Judge Ashton said this was not the point. He considered that the council's evidence '...conspicuously failed to advise the court of the procedures adopted by the council for making the discretionary decision that bankruptcy proceedings were appropriate. There is no indication that the council had any information about Mr Hunt before the issue of the petition or even sought such information.' He said the onus cannot lie on the debtor to establish lack of either physical or mental capacity, because lack of capacity would itself render the debtor unable to do so.

Recovery of Council Tax

9. The primary legislation governing the administration of council tax is the Local Government Finance Act 1992. The Council Tax (Administration and Enforcement) Regulations 1992 SI 613 govern collection and recovery. Council tax is payable by monthly instalments. If payment is not made on the due date, the Council can start recovery proceedings. The Council must issue at least one reminder but if a payment is not made the full sum for the year becomes due and the Council can commence proceedings to recover that sum plus its reasonable costs in the Magistrate's Court. Once a liability order is made by the court, the council may instruct bailiffs, commence insolvency proceedings, seek a charge over the debtor's property or seek the debtor's commitment to prison. The Courts have held that while recovery action for a council tax debt can be

coercive, it is not unlawful if it becomes punitive because of the debtor's failure to pay.¹

The use of bailiffs

10. Bailiffs can be instructed to collect outstanding debts, if necessary through securing a levy against certain goods that might be owned by the debtor. However, in most circumstances bailiffs cannot take such a levy unless they have gained peaceful entry into a debtor's home or premises. If a debtor has insufficient assets to cover the debt, and cannot or will not agree to repay, other options for recovery would need to be considered.

Committal hearings

11. If the Council has attempted, but failed, to collect a debt through the use of bailiffs then it can request that the debtor appear before the Magistrates Court to consider if they should be committed to prison for wilful refusal or culpable neglect in the non-payment of their council tax. Magistrates must conduct a means enquiry to establish the reason for non-payment. They are given options including committing the debtor to prison, suspending any committal on terms (such as ordering a fresh payment arrangement) or remitting some of the debt (i.e. writing it off).

Charging orders

12. Another method of collection available to a Council is to seek a charging order against a debtor.² This is a way of securing a debt through the County Court against a debtor's property, so that in the event that the property is sold, the creditor must be paid from the proceeds of sale. For a Council to be able to pursue this course of action it must hold a liability order against the debtor and the debtor must owe at least £1,000. The Courts can consider suspending a Charging Order on repayment terms. Where a creditor holds an outright Charging Order or any payment terms are not adhered to, then the creditor can seek an Order for Sale. This too, can be suspended at the Court's discretion; for example on the basis of an order that regular repayments are made. A Charging Order can only be made in respect of the property upon which the council tax debt was owed.³

¹ R v Cannock Justices ex parte Ireland (Court of Appeal) (1995)

² Council Tax (Administration and Enforcement) Regulations 1992, regulations 50 and 51

³ Regulation 50, Council Tax (Administration and Enforcement) Regulations 1992 SI no 613/1992

The bankruptcy process

13. Bankruptcy can be used as a means to try and recover a debt where a creditor is owed at least £750. The aim of bankruptcy is to recover the debts due, ultimately by selling the debtor's property. The Insolvency Rules 1968 govern the process. The creditor must serve a document known as a statutory demand. This should explain the debt the Council is seeking to recover. The Insolvency Rules lay down detailed requirements for a creditor to take exhaustive steps to seek to serve the demand personally. Only if such steps have failed can postal service be used. It is for the court to be satisfied, at the application for a bankruptcy petition, that the statutory demand has been properly served. A council may use its own staff for service of bankruptcy proceedings or contract the process out to a private firm.
14. If a statutory demand is served and the debt remains unpaid after a further 21 days (or no arrangement has been made to the satisfaction of the creditor), then a bankruptcy petition can be served. The petition requests that the County Court (or High Court in London) make an order that the debtor be declared bankrupt. A debtor may oppose the making of a bankruptcy order on the grounds that the debt is not owed, and the Courts have the power to stay proceedings if it appears likely that the debt may be settled in a short period of time.
15. Where a bankruptcy order is made the Official Receiver will be appointed to act as Trustee of the debtor to manage their assets. If there are any assets it is likely that the Receiver will appoint a private insolvency practitioner to act as Trustee to manage the assets. The Trustee's role is to act in the creditor's interest by realising all assets and clearing all debts and costs owed. The Receiver and the Trustee may charge fees for their work. These fees can be substantial but as the Receiver and Trustee are officers of the court complaints about these fees are not within the Ombudsman's jurisdiction. A creditor or the bankrupt can apply to the court to have the bankruptcy annulled. If it is annulled the court will decide whether the Receivers' and Trustees' costs will be paid by the creditor or the debtor.

Investigation

What happened in this case

16. Mr Castle has lived at his present address for more than 40 years. He has lived alone since 1992 and before that with his mother, for whom he was the carer during the last year of her life. At that time he was also in full time employment. Mr Castle was made redundant in 1995. He lived off his savings and a small income from his membership of a musical band for the next 10 years or so. He paid all his bills including council tax until about 2006. From that time he describes himself as having followed 'a gradual descent into chronic

introspection' and 'mental instability'. He reports that he subsisted on less and less money, not replacing worn out household items or clothing and spending two winters largely without heating or hot water. His failure to pay electricity bills resulted in his electricity supplier installing a slot meter. He stopped opening his mail in 2004. He left it on the doormat for months at a time, visible through his glass panelled door. He thought it would give the impression to callers that nobody was home. He used the back door to access the property and stayed out of sight if callers came.

17. In 2006 Mr Castle's council tax account fell into arrears. After the application of a 25% sole occupier discount, Mr Castle's bill for the 2006 / 2007 financial year was £953.08 and the Council issued a bill for this sum on 15 March 2006 with provision to pay by ten monthly instalments. On 4 May 2006 the Council issued a reminder for the overdue April instalment of £98.08, and when it was not paid on 26 May a final notice was issued requesting payment of £953.08 being the total sum due for the year. Mr Castle again made no payment and on 6 June 2006 a Magistrate's Court summons was issued against him. On 30 June 2006 the Council obtained a Liability Order in the Magistrate's Court for £953.08 plus £50 costs.
18. The Council instructed certificated bailiffs to try to recover the debt. Certificated bailiffs are employed by private companies and enforce a variety of debts on behalf of organisations such as local authorities. They can seize and sell goods to cover the amount of the debt owed. They also hold a certificate, which permits them (and no-one else) to levy distress for rent, road traffic debts, council tax and non-domestic rates. Certificated bailiffs are required to gain peaceable entry into property before a levy of goods inside a property can take place. The bailiff's log shows that a first visit was made to Mr Castle's home on 14 August 2006. The bailiff's notes from that visit say 'effects appear poor - as seen via window'. Further visits were made on 24 August 2006, on 4 September 2006 and on 21 September 2006: on the two later visits a bailiff's van was sent but no goods were collected. The first enforcement attendance by bailiffs took place on 11 October 2006 when it was noted there were cobwebs over the front door and a large pile of post behind it. A further 'van visit' was made on 19 October 2006 when the bailiff knocked on the windows at the back of the house but received no reply. On 16 November 2006, a second enforcement visit was made. Again it was noted that mail was piled up behind the door. Further visits were made on 8 and 13 December 2006. The accumulation of mail was noted each time, as were the cobwebs over the front door. The bailiff noted there were no signs of food or cups visible through the window; he also noted there were no flies. A neighbour was spoken to and told the bailiff the resident was 'elderly' (Mr Castle was born in 1949) and said he had not been seen for some time. Further unsuccessful visits were made on 22 February 2007 (when a neighbour confirmed Mr Castle was still resident at the property), on 5 March 2007 and on 5 April 2007. The bailiffs returned the liability order to the Council on 25 April

2007 having been unable to gain access or recover property. The bailiffs had not seen or spoken to Mr Castle at any time.

19. For the 2007 / 2008 financial year Mr Castle's council tax bill after the application of a 25% sole occupier discount was £995.97 and the Council issued a bill for this sum on 12 March 2007. On 4 May 2007 the Council wrote to Mr Castle to say the liability order had been returned by the bailiffs as they had been unable to secure any payment from him and the debt of £1,182.08 remained outstanding. The letter advised Mr Castle that committal proceedings for non-payment could now be commenced, in which case a summons would be issued, or alternatively the Council might instruct an insolvency practitioner to commence bankruptcy proceedings against him. The letter advised that if Mr Castle was declared bankrupt, the Official Receiver (or a Trustee appointed by his creditors) would be able to sell his assets, including his property, to settle the debt.
20. In the meantime the Council continued to follow its usual procedures in respect of the council tax liability for the current billing period. On 8 May 2007 the Council issued a reminder for the overdue April instalment of £95.97, and on 25 May a final notice was issued for the total sum due for the year, £995.97. Mr Castle made no payment and on 5 June 2007 a summons was issued for this sum. On 29 June 2007 the Council obtained a Liability Order for the sum with an additional £70 costs. Bailiff fees of £179.00 were added to Mr Castle's council tax account on 3 December 2007.
21. The Council's written procedure for dealing with cases which have been returned without payment or goods in lieu having been secured by the bailiff required it to consider the possibility of recovering the debt by way of a charging order, committal proceedings or bankruptcy proceedings. The Council decided first to make enquiries with Land Registry to ascertain whether Mr Castle was the owner of the property in which he lived, with a view to registering a charge against the property if he was. Mr Castle was the owner of the property, which had been left to him following his mother's death. But the property was not registered with the Land Registry and so the Land Registry was unable to advise the Council about ownership. The Council did not make any further investigations to seek to establish ownership of the property. The Council next considered committal proceedings but decided that given the difficulties in making contact with Mr Castle he would be unlikely to respond to the court if proceedings were instigated, and such proceedings might become protracted. The Council therefore considered that it would be appropriate to pursue the debt by way of bankruptcy proceedings.
22. Solicitors acting on behalf of the Council issued a pre-action letter to Mr Castle on 9 January 2008 but received no response. A statutory demand was then served personally by a process server, Mr Ash, on 1 February 2008, giving 21 days for compliance. The notes made by Mr Ash stated that he told Mr Castle how to comply with the statutory demand and had suggested he seek legal advice. No

response was received and the Council's Senior Exchequer and Benefits Manager agreed jointly that the solicitor should proceed with action in respect of bankruptcy.

23. A bankruptcy petition was therefore obtained on 12 March 2008. On the following day Mr Ash attended Mr Castle's home in order to personally serve the bankruptcy petition. Mr Castle reports that the only face to face contact he had had with any representative from the Council was with this process server. Mr Castle says that Mr Ash approached quietly to the kitchen window and was invited in. Mr Castle was, in his own words, in an agitated and emotional state. The Council's notes in respect of Mr Ash's visit record that Mr Ash had some doubts about Mr Castle and had not been able to reach a view on whether Mr Castle was being evasive or was in fact suffering illness. He reported that he had not been able to establish much about Mr Castle's personal circumstances, except that he was not currently in employment. Mr Ash telephoned the solicitors to report service of the petition. The solicitor's notes state: "D [debtor] has been personally served with the bankruptcy petition today - D stated that he only had £800 to live on and couldn't afford to pay".
24. My investigator has interviewed Mr Ash and his manager, Mr Knight, the bailiff for whom Mr Ash worked at the time. Mr Ash told my investigator that his recollection was that Mr Castle had been extremely distressed and upset at the second visit. Mr Knight told my investigator that he recalled Mr Ash reporting that Mr Castle was suicidal and that he was very worried about him. Mr Knight also told my investigator that he had reported this to the Council verbally at a regular liaison meeting, at which the Council and bailiffs discussed their position in respect of ongoing debt recovery actions. At interview Officer A and Officer B were both asked about this. Officer A said he had never heard anyone refer to Mr Castle as suicidal, and Officer B said that he could not recall any conversation with Mr Knight in which any reference was made to Mr Castle being suicidal. The Council's minutes from the liaison meeting are very general and make no reference to any individual cases discussed.
25. Mr Knight provided my investigator with a copy of his invoice to the Council's solicitor dated 1 April 2008. That contains the following note: 'Please note the defendant is suicidal and I have raised this with [Officer A] at the Council'. An examination of the solicitor's file revealed the original copy of that invoice together with a record of a telephone call on 2 April 2008 from the Council to the solicitor in which the solicitor noted that the Council had concerns about Mr Castle's mental health. The note said 'Could be suicidal - Council to investigate other enforcement options'.
26. According to the Council's procedure, where bankruptcy proceedings are considered the most appropriate method of recovering a debt, any arrangement should be reviewed and discussed by senior officers, Officer A and Officer B. The Council says that following the concerns raised by Mr Ash, the case was

discussed by Officer A and Officer B on 2 April 2008. There is no record of the discussion. At interview both officers told my investigator that they had not been aware of any reference to Mr Castle potentially being suicidal. Officer A said he would not have pursued bankruptcy if it was stated that the debtor was suicidal. He said that consideration would be given to writing off the debt in such circumstances. Both officers said that they were aware of earlier cases where bankruptcy proceedings had been halted in such circumstances.

27. The Council says that when Mr Ash raised concerns about Mr Castle a telephone call was made to the social services department to check whether Mr Castle was known to them, but that department had no record of him. No record was made of the telephone call. The Council also then contacted the Citizen's Advice Bureau and made an appointment for Mr Castle to attend for specialist debt advice on 18 April 2008. Officers A and B decided that notification of that appointment, together with a council tax benefit application form and a means enquiry form, should be personally delivered to Mr Castle by Mr Ash. At interview Officer B advised my investigator that Mr Ash was given a specific instruction to get Mr Castle to read the letter and confirm he had understood it, and that he reported back afterwards that this had been done. But there is no documentary evidence to support this. Mr Castle reports that the letter delivered by the process server on 7 April 2008 remained unopened. He was not therefore aware of and did not attend the appointment which had been arranged for him at the Citizen's Advice Bureau. He reports feeling that his position was hopeless and that 'there was no point in solving this one particular problem'. In mid-April, a further letter was posted to Mr Castle advising him that it was not too late to make contact with the Council with a view to resolving matters. That letter also remained unopened.

28. On 2 May 2008 a bankruptcy order was made against Mr Castle in the County Court. The debt owed to the Council at this time was £2,336.57, made up as follows:

Council tax charges:	2006/07	£953.08
	2007/08	£995.97
	2008/09	£ 88.52
Liability order costs	30 June 2006	£ 50.00
	29 June 2007	£ 70.00
Bailiff fees	3 December 2007	£179.00

29. The Council was advised by the Insolvency Service on 15 September 2008 that as Mr Castle had not surrendered to the bankruptcy proceedings the Official Receiver would therefore appoint an insolvency practitioner to deal with his assets.

30. In November 2008 Mr Castle approached the Department for Work and Pensions to apply for benefits. He was asked to obtain a medical certificate, which he subsequently did. His doctor diagnosed anxiety and depression.

31. In January 2009 Mr Castle was visited by a solicitor from Bristol who was his Trustee in Bankruptcy. Before this visit Mr Castle had no knowledge of the fact that he had been made bankrupt by the Council in May 2008. With the help of a neighbour and following a meeting arranged with the Trustee, Mr Castle cleared the debt in full by taking a loan against his home. Mr Castle reports that after clearing the debt of £2,248.05 he owed to the Council and £3,940.99 owed to a utility company, the additional costs he incurred as a result of the bankruptcy action amounted to some £24,000.
32. Following contact by Mr Castle's neighbour, a meeting was set up with a representative from the Council's corporate debt team on 11 February 2009. Mr Castle's neighbour advised the Council that Mr Castle had not opened his post for some time and may have mental health issues. The Council agreed to hold further recovery on the sum of £1,028.74 owed in respect of the financial year 2008 / 2009 which had not been covered by the bankruptcy order. Mr Castle then completed a claim form for council tax benefit and a request for backdating of any entitlement to August 2008.

Conclusions

33. I accept that the Council has a duty to all its tax payers to try to recover money owed to it. I recognise that, having obtained liability orders and having tried to collect its debts through the use of bailiffs, the Council was short of options as to how it could collect the money it was due. It is clearly not the case that bankruptcy should never be contemplated, but the consequences bankruptcy can impose upon a debtor are severe and in selecting options for recovery the impact on the individual debtor should be taken into account.
34. The Council satisfied itself that there was no means other than bankruptcy by which the debt could be recovered in a realistic timescale. Because Mr Castle's home was not registered with Land Registry it could not pursue a charging order. But it seems to me that the facts about Mr Castle's ownership of the property could have been elicited through conversation with him if the Council had visited him. A charging order on the property would have been a less punitive option than bankruptcy.
35. In making decisions about debt recovery, I expect that Council officers should make reasonable efforts to contact the debtor in person. It is clear that the Council had difficulties engaging with Mr Castle. But it seems to me that there were warning signs noted by the bailiffs which might reasonably have alerted the Council to the possibility that Mr Castle was unwell: it was known that he did not open his post but left it to accumulate over a long period. None of the Council's own officers visited Mr Castle at home. He was seen only by the process server, who reported that he was unsure whether Mr Castle was unwell or was being evasive.

36. I expect that decisions about debt recovery should be recorded with evidence that the decision-maker is satisfied that the debtor can adequately defend themselves against the Council's actions. Although Mr Castle had in the past settled his debts, that payment history alone was not grounds for the Council to conclude that he was able to do so on this occasion. Once the process server reported that he had doubts about Mr Castle's health, the Council should have conducted a review of the case file in light of that information and that review should have been documented. The failure of the Council to document the action taken to review the case was maladministration.
37. The Council had a further opportunity to review the decision to proceed with bankruptcy action when its solicitor was advised that Mr Castle was considered suicidal. The failure to do so was maladministration, and it had significant consequences.
38. As a consequence of the maladministration identified above I consider Mr Castle has been caused an injustice. I consider that if the Council had properly reviewed the case in light of the information that Mr Castle was possibly suicidal it would not have continued with the bankruptcy action. The Council might have been able to engage with Mr Castle and to discuss and pursue an alternative way of securing payment of the arrears.

Finding

39. As explained above, I find maladministration by the Council. As a consequence of the Council's actions in pursuing bankruptcy Mr Castle incurred costs amounting to some £24,000 after his original debt had been cleared. In addition, he has been caused considerable distress, and has been put to time and trouble in trying to resolve the matter. I now seek to put Mr Castle in the position that he would have been in had no maladministration occurred. Taking account of both the financial cost and the distress and time and trouble, I recommend therefore that the Council issues Mr Castle with a formal apology and makes him a payment of £25,000.

Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB



4 May 2011



Dr Jane Martin
Local Government Ombudsman
DX702110
COVENTRY 6

Please reply to: Elizabeth Raikes

Chief Executive

Torbay Council

Town Hall, Castle Circus

Torquay, TQ1 3DR

My ref: [REDACTED]

Your ref: 10 002 564/JM/lc

Telephone: 01803 207177

E-mail: Elizabeth.raikes@torbay.gov.uk

Website: www.torbay.gov.uk

Date: 12 August 2011

Dear Dr Martin

Re: [REDACTED]

Thank you for your Report dated 04 May 2011. I can confirm that your report has been considered by the Standards Committee on 09 June 2011 and it was also presented at Full Council meeting held on 13 July 2011.

The Council has given careful consideration to your recommendations however unusually, the Council has taken the decision not to implement your recommendation to award [REDACTED] the sum of £25,000. The reasons for this are as follows:

- i) The Council accepts the failings in respect of record keeping but does not believe that this caused an injustice to [REDACTED] to the extent of £25,000.
- ii) The Council believes that it made every effort to contact [REDACTED], as evidenced by ;

- Warrant of Execution as a means of enforcement

As you are aware, after following the Council's normal procedure for recovering unpaid council tax, the Council obtained a Liability Order dated [REDACTED]. The Council instructed bailiffs. The bailiffs made 15 unsuccessful visits between 14 August 2006 and 05 April 2007.

Continued overleaf .../

Schools and services for children and young people • social care and housing • recycling, waste disposal and clean streets • community safety • roads and transportation • town planning • tourism, harbours and economic regeneration • consumer protection and licensing • leisure, museums, libraries and arts

If you require this in a different format or language, please contact me.

Following, a second Liability Order obtained on [REDACTED] and following its normal recovery procedure for the second time, placed the matter in the hands of externally instructed solicitors on 02 January 2008.

The solicitors sent their letter before action dated 09 January 2008.

- Process Server's notes dated 01 February 2008

The Process Server personally served the statutory demand upon [REDACTED] on 01 February 2008. The Process Server's notes stated that he had told [REDACTED] how to comply with the statutory demand and suggested he seek legal advice.

- Process Server's notes dated 13 March 2008

The Process Server personally served the bankruptcy petition. The notes stated that he had advised [REDACTED] to seek legal advice. Later the same day the Process Server spoke to the Council's solicitors to confirm the petition had been served. The solicitor's telephone note further states that "D (debtor) stated that he only had £800 to live on and couldn't afford to pay".

- Hand-delivered letter from Council to [REDACTED] dated 03 April 2008

Following the above discussions with the Council's solicitors and a meeting between the Case Officer and his manager (unrecorded meeting), the Case Officer arranged to have a letter personally served upon [REDACTED]. The letter included details of the appointment that had been arranged for [REDACTED] to see the Citizens Advice Bureau on Friday 18th April 2008 together with 2 forms for him to complete. One form to claim council tax benefit together with a means enquiry form.

- Hand-delivery of letter on 07 April 2008

The Process Server was instructed to ask [REDACTED] to contact the Council to discuss his circumstances. This action was recorded as being completed in an email sent to the Council's solicitors dated 07 April 2008.

The Case Officer specifically recalls the telephone call with the Process Server who confirmed the letter had been delivered. The Process Server confirmed that [REDACTED] appeared to have understood the situation was serious and needed to do something about it.

Whilst no contemporaneous record was made of the telephone call with the Process Server, the Case Officer compiled a chronology of the case dated 19 February 2009. His recollection of the situation accords with [REDACTED] own

Continued overleaf .../

account of the meeting with the Process Server on 07 April 2008 (see [REDACTED] letter to LGO dated 05 July 2010). The Process Server was under the impression that [REDACTED] was going to resolve the situation and passed this on to the Council.

The Case Officer arranged to have the letter personally served upon [REDACTED]. The only reason to have gone to these lengths would have been to obtain information through a discussion with the Process Server as to the outcome of the service. .

The Council was under the impression that [REDACTED] had read and understood this letter. The first the Council knew that this letter had not been read was upon receipt of your letter dated 05 July 2010 enclosing [REDACTED] complaint.

- Charging Order as a means of enforcement

Consideration was given to the question of utilising charging order proceedings. As you know, a Land Registry search was undertaken on 03 January 2007 but as the property was not registered the Council could not be certain about ownership. Even if, the Council considered that [REDACTED] owned the property, the Council had no evidence and could not prove ownership to the Court.

It is on record that the question of using a charging order was discussed with the Council's solicitors as late as 01 May 2008. It was confirmed that it was not possible due to the fact the property was unregistered.

- Attachments of earnings and committal proceedings as a means of enforcement

Both of these procedures were considered by the Council. I accept there is no record of these discussions. [REDACTED] was not working so an attachment of earnings was not possible and due to [REDACTED] elusiveness, it was considered that he was unlikely to attend a court hearing.

- Decision to proceed with bankruptcy

On or around 28 April 2008 [REDACTED] will have had the opportunity to halt the process and pay the arrears of Council Tax either in full or by instalments having been advised through many different means on no less than 27 occasions (council tax bills, correspondence, bailiff visits and process server visits).

Continued overleaf .../

It took the Council almost 2 years before reaching the point of the making [REDACTED] bankrupt.

With the exception of a debtor who is incapable of dealing with his own affairs, the debtor will have made decision not to pay his council tax. The Council followed its own procedure and could not verify that [REDACTED] had ill health issues and therefore made a decision to proceed with bankruptcy.

iii) The Council does not accept that it was able to **evidence** details of [REDACTED] health and economical wellbeing. Information as to [REDACTED] circumstances was received and appropriately considered and further information sought. The information did not amount to an evidential basis as to [REDACTED] health to the extent that he was incapable of dealing with his affairs. This is demonstrated by;

- The Case Officer recalls having a telephone conversation (unrecorded) with the Process Server when he was advised that he had some doubts about [REDACTED] behaviour. The Process Server could not establish whether [REDACTED] was being evasive or due to illness. The Process Server established that [REDACTED] was not working.
- Following this conversation, the Case Officer made enquiries with the Adult Social Services Duty Team when he was advised that [REDACTED] was not known to them. No record was made of this telephone call.
- S & S Process Invoice dated 01 April 2008
It appears from the note included on the Invoice, the Process Server raised the question as to whether [REDACTED] was suicidal. The Case Officer discussed the issue with the Council's solicitors on 02 April 2008 and 03 April 2008.
- Letter to [REDACTED] dated 22 April 2008
The Council heard nothing further from [REDACTED]. The Council contacted Citizens Advice Bureau who confirmed that [REDACTED] had not attended the arranged meeting with them. A further letter was sent on 22 April 2008 advising that it was not still too late for [REDACTED] to contact the Council.

As far the Council was aware, it had no evidence that [REDACTED] was suicidal or that [REDACTED] was incapable of dealing with his affairs. If the Council had evidence to prove [REDACTED] health condition (which showed he was incapable of dealing with his affairs), I am satisfied that the Council would have adjourned the proceedings.

Continued overleaf .../

It is the Council's view that rather than [REDACTED] wellbeing impeding his ability to pay his council tax, [REDACTED] made a considered decision to avoid paying the same, as evidenced by his admittance that he;

- o left his mail on the floor to ensure it would be seen by visitors
- o gave the impression no-one lived at home
- o went out for long walks in order to avoid the bailiffs
- o stayed out of view when visitors called
- o expected his debts would be settled from the winding up of his estate
- o failed to apply for benefits so as not to compromise his dignity

[REDACTED] had not been seen to see a Doctor and was not in receipt of medical treatment at the time of the Council's decision to proceed with bankruptcy. [REDACTED] was subsequently diagnosed with depression and anxiety in November 2008 after approaching the Department for Work and Pensions.

Further the Trustee in Bankruptcy did not believe in January 2009 that [REDACTED] was unable to manage his affairs, as she did not make an application to the Court for [REDACTED] to have a representative, nor did they make an application for the bankruptcy order to be annulled due to capacity reasons.

The Council works very hard to comply with its legal duties under the Disability Discrimination Act 1995 together with vulnerable people. It provides help and assistance to persons found to be suffering financial hardship or having difficulty in managing their own affairs and the Council works alongside the Citizen's Advice Bureau in this regard.

- iv) [REDACTED] had sufficient assets to obtain funding to clear his debts. [REDACTED] made the decision not to do so. If [REDACTED] had acted this would have involved far less cost.

A further example of [REDACTED] actions resulting in additional costs are in relation to the Bankruptcy Order. The Official Receiver was initially going to administer [REDACTED] estate. However, due to [REDACTED] having not surrendered to the bankruptcy proceedings, the Official Receiver instructed a Licensed Insolvency Practitioner, [REDACTED] (Trustee in Bankruptcy).

The Trustee in Bankruptcy [REDACTED] However it took over 4 months before the Trustee was able to progress the administration of [REDACTED] estate.

12 August 2011

- v) The Council believes the excessive cost in this case was due to the appointment of a Trustee in Bankruptcy that could have been avoided as referred to above.

The Trustees' final statement in the sum of £26,064.02 is calculated as follows:

Opening balance	£ 1,378.00
Petitioner creditors costs	1207.50
SWW debt	3940.99
Council tax	2248.05
Interest	698.60
Discounted trustees fees including legal fees, disbursements and VAT	12,500.00
Secretary of State fee	4090.88

I have calculated that [REDACTED] would have been required to clear his debt to South West Water and Torbay Council in any event (including interest) in the sum of £6887.64.

I have also considered that if [REDACTED] had engaged with the Council and the Council would have been able to utilise enforcement by way of a charging order, [REDACTED] would have needed to instruct his own solicitors to deal with the first registration of his property together with the normal disbursements and VAT that would have been payable. I estimate this would have been in the region of £3000.00.

These elements would have cost [REDACTED] approximately the sum of £9,800.

It seems to me that Local Authorities have been criticised in using bankruptcy proceedings simply due to the level of costs incurred by a Trustee which are usually disproportionate to the debt. I accept that there are situations where bankruptcy proceedings are inappropriate where the debtor is incapable of dealings with their affairs due to the Mental Health Act 1983 or severe disabilities which are known (and are evidenced) to the Local Authority.

In all of the comparable cases I have looked at, the debtors were either in contact with the Local Authorities and/or were known to Adult Social Services. That is not the situation in this case. [REDACTED] was not communicating with the Council despite extensive attempts, and checks were made which demonstrated that he was not known to Adult Social Services.

Continued overleaf .../

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12 August 2011

A Local Authority is not debarred from using bankruptcy proceedings simply because the Trustees fees may be disproportionate in relation to the debt, so long as the relevant checks had been made and bankruptcy will be the last resort. As far as I am concerned, bankruptcy proceedings were the last resort and the Council proceeded properly. The Council provides assistance to persons found to be suffering hardship or having difficulty in managing their own affairs and the Council works alongside the Citizen's Advice Bureau. In the past the Council has withdrawn bankruptcy proceedings when evidence came to light which made it inappropriate to continue. If bankruptcy action had not been taken, it seems the only other option would have been to write off the debt. There was not an evidential basis to write off the debt and this would not have been acceptable or fair to other council tax payers.

As I have said the Council accepts failings in its record keeping and has written to [REDACTED] apologising for this and offered £1,000 by way of compensation.

The Council has also put in hand arrangements to update its policy for the procedure for unpaid Council Tax.

I trust you will accept the Council's position for the reasons set out above.

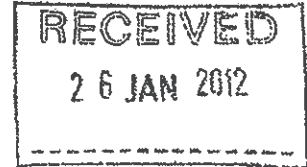
Yours sincerely



Elizabeth Raikes
Chief Executive

25 January 2012

AM-B, the
JG + Y, by



Ms Elizabeth Raikes
Chief Executive
Torbay Council
Town Hall
Castle Circus
Torquay TQ1 3DR

Your ref: [REDACTED]

Our ref: 10 002 564/NHJ/lam

Please quote our reference when contacting us and,
if using email, please put the reference number in the email subject header

Dear Ms Raikes

Complaint by [REDACTED]

It was good to meet you, the Mayor, Gordon Oliver, and the Executive Head of Commercial Services, Anne-Marie Bond, on 16 November 2011 to discuss the Ombudsman's report on her investigation into [REDACTED] complaint.

As I said at our meeting, we would prepare a draft further report to share with you. That draft report is now enclosed and it would be very helpful to receive any comments you may have within the next three weeks.

The Ombudsman is required, by law, to issue a further report when she is not satisfied with an authority's response to her first report. While recognising the strength of feeling behind the Council's response, she remains firmly of the view that her reasoning is sound and that your Council should make the payment as recommended.

The further report needs to be considered by Full Council. If the view of your Council remains unchanged, there is one further step the Ombudsman may take. She may require the authority to publish a statement in a local newspaper, at the Council's own expense, to explain why the Council does not accept the Ombudsman's report and her recommendations.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read "Neville Jones".

Neville Jones
Deputy Ombudsman

Enc. Draft further report.

The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

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Jane Martin
Local Government Ombudsman
Neville Jones
Deputy Ombudsman

Draft
Further Report
on an investigation into
complaint no 10 002 564 against
Torbay Council

..... 2012

1. In May 2011 I issued a report on a complaint by Mr Castle (not his real name). He complained that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

The Investigation

2. Mr Castle has lived at his present address for more than 40 years. He has lived alone since 1992 and before that with his mother, for whom he was the carer during the last year of her life. At that time he was also in full time employment. Mr Castle was made redundant in 1995. He lived off his savings and a small income from his membership of a musical band for the next 10 years or so. He paid all his bills including council tax until about 2006. From that time he describes himself as having followed 'a gradual descent into chronic introspection' and 'mental instability'. He stopped opening his mail in 2004. He left it on the doormat for months at a time, visible through his glass panelled door. He used the back door to access the property and stayed out of sight if callers came.
3. In 2006 Mr Castle's council tax account fell into arrears and the Council followed due process and eventually passed the account to bailiffs for collection. The bailiff made twelve visits to Mr Castle's home between August 2006 and April 2007. Notes from the visits recorded that there were cobwebs over the door and a large accumulation of post behind it. The bailiffs returned the liability order to the Council on 25 April 2007 having been unable to gain access or recover property. The bailiffs had not seen or spoken to Mr Castle at any time. Council tax arrears continued to accrue as Mr Castle was not making any payments.
4. The Council made enquiries with Land Registry to ascertain whether Mr Castle was the owner of the property in which he lived, with a view to registering a charge against the property if he was. Mr Castle was the owner of the property, which had been left to him following his mother's death, but the property was not registered with the Land Registry. The Council did not make any further investigations to seek to establish ownership of the property. The Council next considered committal proceedings but decided that Mr Castle would be unlikely to respond to the court. The Council therefore considered that it would be appropriate to pursue the debt by way of bankruptcy proceedings.
5. Following the issue of a pre-action letter a statutory demand was delivered by a process server, Mr Ash, who noted that he told Mr Castle how to comply with the statutory demand and suggested he seek legal advice. No response was received and the Council decided to commence action in respect of bankruptcy.
6. A bankruptcy petition was therefore obtained on 12 March 2008. On the following day Mr Ash attended Mr Castle's home in order to personally serve the bankruptcy petition. The Council's notes in respect of Mr Ash's visit record that

Mr Ash had some doubts about Mr Castle and had not been able to reach a view on whether Mr Castle was being evasive or was in fact suffering illness.

7. The bailiff for whom Mr Ash worked told my investigator that he recalled Mr Ash reporting that Mr Castle was suicidal, and this was noted on the bailiff's invoice to the Council's solicitor. The solicitor's file includes a note of a telephone call from the Council referring to concerns about Mr Castle's mental health: the note read 'Could be suicidal - Council to investigate other enforcement options'.
8. The Council says a telephone check was made with social services to ascertain whether Mr Castle was known to them, but that department had no record of him. No record was made of the telephone call. The Council then contacted the Citizen's Advice Bureau and made an appointment for Mr Castle to attend for specialist debt advice. The letter was hand delivered by Mr Ash, and the Council says that he had been instructed to ensure Mr Castle read and understood the letter and that he reported back afterwards that this had been done. But there is no documentary evidence to support this and Mr Castle reports that the letter remained unopened. A further letter was posted to Mr Castle asking him to make contact but this too remained unopened.
9. On 2 May 2008 a bankruptcy order was made against Mr Castle in the County Court. The debt owed to the Council at this time was £2,336.57. It was not until January 2009 when Mr Castle was visited by the person appointed as his Trustee in Bankruptcy that he became aware that he had been made bankrupt by the Council. With the help of a neighbour and following a meeting arranged with the Trustee, Mr Castle cleared the debt in full by taking a loan against his home. Mr Castle reports that after clearing the debt of £2,248.05 he owed to the Council and £3,940.99 owed to a utility company, the additional costs he incurred as a result of the bankruptcy action amounted to some £24,000.

My Conclusions

10. The consequences bankruptcy can impose upon a debtor are severe and in selecting options for recovery the impact on the individual debtor should be taken into account. A charging order on the property would have been a less punitive option than bankruptcy, and I found that the Council was at fault in failing to make further attempts to communicate with Mr Castle to establish the facts about the ownership of his home.
11. I expect that decisions about debt recovery should be recorded with evidence that the decision-maker is satisfied that the debtor can adequately defend themselves against the Council's actions. I found that the Council was at fault in failing to conduct and document a full review of the case in light of the information it received that Mr Castle was possibly suicidal. My view is that if such a review had been undertaken the Council would not have continued with bankruptcy action.

12. I recommended that the Council should provide a formal apology to Mr Castle and pay him £25,000.

Events since my report

13. The Council has refused to pay [REDACTED] the compensation I recommended and instead offered to pay £1,000. The Council has noted that the excessive cost in this case was due to the appointment of a Trustee in Bankruptcy which could have been avoided as Mr Castle had sufficient assets to obtain funding to clear his debts. The Council's view is that he made a considered decision not to pay his council tax and that this is evidenced by his statement more than a year after the bankruptcy proceedings that he left unopened mail on the floor to give the impression nobody was at home and went for long walks to avoid the intimidation he felt when bailiffs called.
14. The Council however does not comment on Mr Castle's description in the same statement of his 'gradual descent into chronic introspection' which rendered him unable to deal with day to day matters including his bills. His action in seeking to avoid confrontation and his failure to deal with his bills might reasonably be considered a symptom of his poor mental state at the time and the Council did nothing purposeful to explore this. Although there were 15 visits by bailiffs and a further three by the process server, no attempt was made by a Council officer to engage face to face with Mr Castle to explore his personal circumstances and ascertain the possibility of alternative means of debt recovery (such as his legal interest in the property which had been his home for more than 40 years).
15. The Local Government Ombudsman's Focus Report on the use of bankruptcy for council tax debts¹ refers to the draconian consequences of bankruptcy for affected individuals and the importance of particular measures a council should take to determine whether bankruptcy is a fair and proportionate action before proceeding. Such measures include making reasonable efforts to contact the debtor in person by a home visit if necessary and a case review by a senior officer which includes gathering sufficient evidence about the debtor's personal circumstances and considering whether those circumstances warrant them being protected from recovery action. There is no evidence that Mr Castle was capable of dealing with his own affairs at the time of the recovery action or that bankruptcy was a considered decision taken in the knowledge of potential mental illness after the due weighing of all pertinent facts. What is in evidence is that the Council had been advised that Mr Castle was possibly suicidal, but continued nonetheless with the bankruptcy action.

¹ Can't pay? Won't Pay? Using bankruptcy for council tax debts. The Commission for Local Administration in England; 2011.

16. The Council has confirmed that in the past it has withdrawn bankruptcy proceedings where evidence came to light that it would be inappropriate to continue, and the Council's officers have confirmed that a reference to a debtor being possibly suicidal would lead to bankruptcy action being halted and reconsidered. In this case the Council entirely failed to reconsider, and that was maladministration.
17. In terms of the costs associated with the bankruptcy, it is correct that Mr Castle would have been required to discharge his debt to the Council as well as a debt to the water company which joined in the bankruptcy proceedings. However, having raised £34,967 from the equity release in his home, Mr Castle received only £2,046 after all disbursements, making a total cost of £32,921. The sums owed to the Council and to the water company, plus costs and interest added before the bankruptcy proceedings totalled £8711. Deducting this from the sum of £32,921 gives a balance of £24,410. The Council correctly states that even if it had taken the less punitive step of obtaining a charging order, there would have been some costs associated with that action too. However, I made my recommendation for a remedy of £25,000 taking account of these facts and having particular regard to the significant impact of bankruptcy action on a debtor as well as the distress caused to Mr Castle and the time and trouble taken in pursuing the complaint. Interest on the equity release made necessary by the bankruptcy action means that the cost to Mr Castle will continue to accrue.
18. The Local Government Act 1974 provides that if the Ombudsman is not satisfied with the Council's response to recommendations a further report shall be issued. I have therefore issued this further report on Mr Hall's complaint and call on the Council to reconsider its position and make the payment of compensation recommended.

**Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

..... 2012

Please reply to: Elizabeth Raikes
Chief Executive,
Town Hall, Torquay. TQ1 3DR

Mr Neville Jones,
Deputy Ombudsman,
The Oaks No. 2,
Westwood Way,
Westwood Business Park,
COVENTRY. CV4 8JB

My ref: ER/SU
Your ref: 10 002 564/NHJ/lam
Telephone: 01803 207116
E-mail: Elizabeth.raikes@torbay.gov.uk
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Date: 14 February 2012

Dear Mr. Jones

COMPLAINT BY MR CASTLE

Thank you for your letter of 25 January 2012 and for the opportunity of explaining to you and the Ombudsman the position of the Council in respect of this complaint at our meeting on 16 November 2011.

It is however clearly disappointing that the Ombudsman was not persuaded on any of the points discussed at our meeting. Within your covering letter you record our strength of feeling on this case and that strength of feeling has not lessened in the time since our meeting. Whilst I appreciate that further representations are unlikely to persuade the Ombudsman at this juncture I believe that it is important for the Council to make the following points:

1. At paragraph 15 the report states “there is no evidence that Mr [Castle] was capable of dealing with his own affairs.” With the greatest of respect to the Ombudsman any reliance on this statement is incorrect in law. Section 1(2) of the Mental Capacity Act 2005 provides that a person must be **assumed to have capacity unless it is actually established that they lack capacity**. The Council, through its agents made extensive efforts to contact Mr Castle including 18 personal visits. Whilst some of these visits raised a level of concern as to Mr Castle’s wellbeing there was no evidence that actually established that he lacked capacity. Guidance and legal commentary on the Mental Capacity Act make repeated reference to the fact that it must not be assumed that a person lacks the mental capacity needed in any given situation just because, for example, the person has a disability or mental health problem.

In the absence of actual evidence that Mr Castle lacked capacity, in accordance with the law as set out above the Council had to proceed on the basis that Mr Castle had capacity to manage his property and affairs.

2. Further in paragraph 15 there is reference to the LGO Focus Report on the use on bankruptcy for Council Tax debts and the guidance within the same that reasonable efforts should be made to 'gather sufficient evidence about the debtor's personal circumstances and considering whether those circumstances warrant them being protected from recovery action.'

In this case it took over 2 years to the point when bankruptcy was used by the Council to recover the debt owed by Mr Castle. There were significant attempts to engage Mr Castle within this time. Mr Castle did not engage to provide any information which the Council could have used to consider whether his individual circumstances warranted protection from the recovery action. Enquiries with Adult Social Services evidenced that he was unknown to them, and the provisions of the Data Protection Act 1998 (in respect of the protection of personal sensitive information) meant that it would be unlawful for professionals such as the G.P. to provide information as to Mr Castle's circumstances without his consent.

Again with respect, it is our belief that the Ombudsman is misguided in her expectation of the Council in these specific circumstances, as there was no other information that the Council could have obtained to feed into a review of the case prior to the bankruptcy proceedings being instigated, given Mr Castle's lack of engagement.

The suggestion that a visit by one of the Council's Officers to the property would have borne greater success in eliciting further information than the 18 visits by our agents, is in our respectful view totally speculative. Rather there is an evidential basis to support the view that such a visit was unlikely to have established any contact with Mr Castle. In this case Mr Castle had been offered the opportunity of a meeting on many occasions, it is not the fault of the Council that he failed to engage.

As I have referred to above, it took the Council over 2 years of trying to engage with Mr Castle before bankruptcy was pursued to recover the Council Tax debt. It is implicit within the Report that the Ombudsman believes that this period was not long enough. From my perspective there has to be a point at which the Council concludes that further attempts are likely to be futile. At that point in the absence of actual **evidence** of a lack of capacity, or other situation which would indicate such proceedings were not appropriate, the Council is duty bound to seek to recover the debt in fairness to the other residents of Torbay.

We tried for over two years to engage Mr Castle, however he chose not to respond. Given this lack of engagement and the fact that his property was unregistered, it was not legally possible for the Council to pursue a Charging Order. Having already decided not to pursue Mr Castle's committal, the only available options for the Council was to write off the debt or pursue the bankruptcy. At the time we did not believe that it was appropriate to write off the debt, and with the benefit of the knowledge of subsequent events, we remain of the same view. Therefore bankruptcy was the only appropriate course of action, and one which I firmly believe that we should not be criticised for pursuing.

I can confirm that when we have your final report this will be presented to a meeting of the Full Council for their consideration.

Yours sincerely,

A handwritten signature in black ink that reads "Elizabeth Raikes". The signature is written in a cursive style with a large initial 'E'.

Elizabeth Raikes
Chief Executive

Further report

on an investigation into
complaint no 10 002 564 against
Torbay Council

28 March 2012

1. In May 2011 I issued a report on a complaint by Mr Castle (not his real name). He complained that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

The investigation

2. Mr Castle has lived at his present address for more than 40 years. He has lived alone since 1992 and before that with his mother, for whom he was the carer during the last year of her life. At that time he was also in full time employment. Mr Castle was made redundant in 1995. He lived off his savings and a small income from his membership of a musical band for the next 10 years or so. He paid all his bills including council tax until about 2006. From that time he describes himself as having followed 'a gradual descent into chronic introspection' and 'mental instability'. He stopped opening his mail in 2004. He left it on the doormat for months at a time, visible through his glass panelled door. He used the back door to access the property and stayed out of sight if callers came.
3. In 2006 Mr Castle's council tax account fell into arrears and the Council followed due process and eventually passed the account to bailiffs for collection. The bailiff made twelve visits to Mr Castle's home between August 2006 and April 2007. Notes from the visits recorded that there were cobwebs over the door and a large accumulation of post behind it. The bailiffs returned the liability order to the Council on 25 April 2007 having been unable to gain access or recover property. The bailiffs had not seen or spoken to Mr Castle at any time. Council tax arrears continued to accrue as Mr Castle was not making any payments.
4. The Council made enquiries with Land Registry to ascertain whether Mr Castle was the owner of the property in which he lived, with a view to registering a charge against the property if he was. Mr Castle was the owner of the property, which had been left to him following his mother's death, but the property was not registered with the Land Registry. The Council did not make any further investigations to seek to establish ownership of the property. The Council next considered committal proceedings but decided that Mr Castle would be unlikely to respond to the court. The Council therefore considered that it would be appropriate to pursue the debt by way of bankruptcy proceedings.
5. Following the issue of a pre-action letter a statutory demand was delivered by a process server, Mr Ash, who noted that he told Mr Castle how to comply with the statutory demand and suggested he seek legal advice. No response was received and the Council decided to commence action in respect of bankruptcy.
6. A bankruptcy petition was therefore obtained on 12 March 2008. On the following day Mr Ash attended Mr Castle's home in order to personally serve the

bankruptcy petition. The Council's notes in respect of Mr Ash's visit record that Mr Ash had some doubts about Mr Castle and had not been able to reach a view on whether Mr Castle was being evasive or was in fact suffering illness.

7. The bailiff for whom Mr Ash worked told my investigator that he recalled Mr Ash reporting that Mr Castle was suicidal, and this was noted on the bailiff's invoice to the Council's solicitor. The solicitor's file also includes a note of a telephone call from the Council referring to concerns about Mr Castle's mental health: the note read 'Could be suicidal - Council to investigate other enforcement options'.
8. The Council says a telephone check was made with social services to ascertain whether Mr Castle was known to them, but that department had no record of him. No record was made of the telephone call. The Council then contacted the Citizen's Advice Bureau and made an appointment for Mr Castle to attend for specialist debt advice. The letter was hand delivered by Mr Ash, and the Council says that he had been instructed to ensure Mr Castle read and understood the letter and that he reported back afterwards that this had been done. But there is no documentary evidence to support this and Mr Castle reports that the letter remained unopened. A further letter was posted to Mr Castle asking him to make contact but this too remained unopened.
9. On 2 May 2008 a bankruptcy order was made against Mr Castle in the County Court. The debt owed to the Council at this time was £2,336.57. It was not until January 2009 when Mr Castle was visited by the person appointed as his Trustee in Bankruptcy that he became aware that he had been made bankrupt by the Council. With the help of a neighbour and following a meeting arranged with the Trustee, Mr Castle cleared the debt in full by taking a loan against his home. Mr Castle reports that after clearing the debt of £2,248.05 he owed to the Council and £3,940.99 owed to a utility company, the additional costs he incurred as a result of the bankruptcy action amounted to some £24,000.

My conclusions

10. The consequences bankruptcy can impose upon a debtor are severe and in selecting options for recovery the impact on the individual debtor should be taken into account. A charging order on the property would have been a less punitive option than bankruptcy, and I found that the Council was at fault in failing to make further attempts to communicate with Mr Castle to establish the facts about the ownership of his home.
11. I expect that decisions about debt recovery should be recorded with evidence that the decision-maker is satisfied that the debtor can adequately defend themselves against the Council's actions. I found that the Council was at fault in failing to conduct and document a full review of the case in light of the information it

received that Mr Castle was possibly suicidal. My view is that if such a review had been undertaken the Council would not have continued with bankruptcy action.

12. I recommended that the Council should provide a formal apology to Mr Castle and pay him £25,000.

Events since my report

13. The Council has refused to pay Mr Castle the compensation I recommended and instead offered to pay £1,000. The Council has noted that the excessive cost in this case was due to the appointment of a Trustee in Bankruptcy which could have been avoided as Mr Castle had sufficient assets to obtain funding to clear his debts. The Council's view is that he made a considered decision not to pay his council tax and that this is evidenced by his statement more than a year after the bankruptcy proceedings that he left unopened mail on the floor to give the impression nobody was at home and went for long walks to avoid the intimidation he felt when bailiffs called.
14. The Council however does not comment on Mr Castle's description in the same statement of his 'gradual descent into chronic introspection' which rendered him unable to deal with day to day matters including his bills. His action in seeking to avoid confrontation and his failure to deal with his bills might reasonably be considered a symptom of his poor mental state at the time and the Council did nothing purposeful to explore this. Although there were 15 visits by bailiffs and a further three by the process server, no attempt was made by a Council officer to engage face to face with Mr Castle to explore his personal circumstances and ascertain the possibility of alternative means of debt recovery (such as his legal interest in the property which had been his home for more than 40 years).
15. The Local Government Ombudsman's Focus Report on the use of bankruptcy for council tax debts¹ refers to the draconian consequences of bankruptcy for affected individuals and the importance of particular measures a council should take to determine whether bankruptcy is a fair and proportionate action before proceeding. Such measures include making reasonable efforts to contact the debtor in person by a home visit if necessary and a case review by a senior officer which includes gathering sufficient evidence about the debtor's personal circumstances and considering whether those circumstances warrant them being protected from recovery action. There is no evidence that Mr Castle was capable of dealing with his own affairs at the time of the recovery action or that bankruptcy was a considered decision taken in the knowledge of potential mental illness after the due weighing of all pertinent facts. What is in evidence is that the Council had

¹ Can't pay? Won't Pay? Using bankruptcy for council tax debts. The Commission for Local Administration in England; 2011.

been advised that Mr Castle was possibly suicidal, but continued nonetheless with the bankruptcy action.

16. It is not for me to judge capacity under the Mental Capacity Act 2005, and I have not done so, but I can reach a view on how Mr Castle was dealing with his own affairs: his actions demonstrated that he was not dealing with his affairs at all. The Council points out that its agents made a number of personal visits to Mr Castle's home, some of which it says raised a level of concern but did not provide evidence that Mr Castle lacked capacity. The Council however did not act on that concern or take steps to establish evidence of capacity. The Council says that the suggestion that a home visit might have elicited more information from Mr Castle is purely speculative. But the fact is that the Council did not undertake such a visit: if it had done so there would be no need for speculation.
17. The Council takes the view that in the absence of evidence of lack of capacity or any other circumstances which would indicate proceedings were inappropriate, it was duty bound to seek to recover the debt. However, the key point is that the Council had information that Mr Castle was possibly suicidal, and it gave that information no consideration. The Council has confirmed that in the past it has withdrawn bankruptcy proceedings where evidence came to light that it would be inappropriate to continue, and the Council's officers have confirmed that a reference to a debtor being possibly suicidal would lead to bankruptcy action being halted and reconsidered. In this case the Council entirely failed to reconsider, and that was maladministration.
18. In terms of the costs associated with the bankruptcy, it is correct that Mr Castle would have been required to discharge his debt to the Council as well as a debt to the water company which joined in the bankruptcy proceedings. However, having raised £34,967 from the equity release in his home, Mr Castle received only £2,046 after all disbursements, making a total cost of £32,921. The sums owed to the Council and to the water company, plus costs and interest added before the bankruptcy proceedings totalled £8,711. Deducting this from the sum of £32,921 gives a balance of £24,410. The Council correctly states that even if it had taken the less punitive step of obtaining a charging order, there would have been some costs associated with that action too. However, I made my recommendation for a remedy of £25,000 taking account of these facts and having particular regard to the significant impact of bankruptcy action on a debtor as well as the distress caused to Mr Castle and the time and trouble taken in pursuing the complaint. Interest on the equity release made necessary by the bankruptcy action means that the cost to Mr Castle will continue to accrue.
19. The Local Government Act 1974 provides that if the Ombudsman is not satisfied with the Council's response to recommendations a further report shall be issued. I have therefore issued this further report on Mr Castle's complaint and call on the

Council to reconsider its position and make the payment of compensation recommended.

**Dr Jane Martin
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28 March 2012