

METROPOLITAN BOROUGH OF SEFTON

## COUNCIL SUMMONS

To Members of the Metropolitan Borough Council

Dear Councillor

You are requested to attend a Special Meeting of the Sefton Metropolitan Borough Council to be held on **Thursday 13th May, 2010 at 6.30 pm at the Town Hall, Bootle** to transact the business set out on the agenda overleaf.

Yours sincerely,

Chief Executive

Town Hall,  
Southport

5 May 2010

Please contact Steve Pearce, Head of Committee and Member Services  
on 0151 934 2046 or e-mail [steve.pearce@legal.sefton.gov.uk](mailto:steve.pearce@legal.sefton.gov.uk)

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# **A G E N D A**

**1. Apologies for Absence**

**2. Declarations of Interest**

Members and Officers are requested to give notice of any personal or prejudicial interest and the nature of that interest, relating to any item on the agenda in accordance with the relevant Code of Conduct.

**3. Minutes**

(Pages 7 - 14)

Minutes of the Ordinary Council Meeting held on 25 March 2010

**4. Mayor's Communications**

**Public Session**

**5. Matters Raised by the Public**

To deal with matters raised by members of the public within the Borough, in accordance with the procedures relating to Petitions, Public Questions and Motions set out in Rule 11 of the Council and Committee Procedure Rules.

(Details of any further Petitions notified or Questions submitted to the Interim Head of Corporate Legal Services by members of the public in accordance with Rule 11 will be circulated at the meeting).

**Council Business Session**

**6. Election Returns - 6 May 2010**

To receive and note the report of the Assistant Chief Executive and Returning Officer on the results of the Council Elections held on 6 May 2010 (to be circulated prior to the commencement of the Council Meeting)

**7. Appointment of the Leader of the Council**

To appoint the Leader of the Council for a four year term of office or until such time as his/her term of office expires.

**8. Appointment of the Cabinet 2010/11**

To receive and note the report of the Leader of the Council on the size, composition and portfolios of the Cabinet and the appointment of the Deputy Executive Leader and Deputy Leader (to be circulated prior to the commencement of the Council Meeting)

**9. Governance Review – Proposed Revisions to the Constitution to reflect changes to geography of Crosby and Linacre and Derby Area Committees**

(Pages 15 - 18)

Report of the Neighbourhoods and Investment Programmes Director

**10. Appointment of Committees and Working Groups 2010/11**

a) To Determine the Size and Membership of Committees and Working Groups in accordance with the Political Balance Rules

(Details of the allocation of Committee Places in accordance with the Political Balance Rules and the proposed membership of Committees and Working Groups for 2010/11 will be circulated prior to the commencement of the Council Meeting)

b) Terms of Reference for Committees and Working Groups 2010/11

Subject to the item above, to approve the terms of reference of the Committees and Working Groups as set out in Part 3 of the Council Constitution

**11. Appointment of Representatives on Joint Authorities 2010/11**

To approve the Council's representation on the following Joint Authorities:

- (i) Merseyside Fire and Civil Defence Authority
- (ii) Merseyside Integrated Transport Authority
- (iii) Merseyside Waste Disposal Authority
- (iv) Merseyside Police Authority (nominations only – appointments will be made by the Merseyside Police Authority Appointments Committee)

(Details of the proposed representation on the above bodies will be circulated prior to the commencement of the Council Meeting)

**12. Appointment of Representatives on Sefton Borough Partnership 2010/11**

(Details of the proposed representation on the Sefton Borough Partnership will be circulated prior to the commencement of the Council Meeting)

- 13. Delegation of Powers in respect of the Discretion to Grant Equity Re-location Loans in the Housing Market Renewal Area** (Pages 19 - 24)  
Report of the Neighbourhoods and Investment Programmes Director
- 14. Enforced Sales Procedure and Property at 24 Lander Road, Litherland** (Pages 25 - 70)  
Report of the Neighbourhoods and Investment Programmes Director
- 15. Statutory Duty to Respond to Petitions**  
The report of the Assistant Chief Executive will be circulated prior to the commencement of the Council Meeting
- 16. Constitution - Senior Management Structure** (Pages 71 - 80)  
Report of the Interim Head of Corporate Legal Services
- 17. Dates of Council Meetings 2010/11**  
To note that the Council meetings scheduled to be held during the Municipal Year 2010/11 are as follows:
- 20 May 2010 (Annual Meeting)
  - 8 July 2010
  - 2 September 2010
  - 21 October 2010
  - 16 December 2010
  - 13 January 2011
  - 3 March 2011 (Budget Meeting)
  - 24 March 2011
- 18. Gardner Avenue Allotments** (Pages 81 - 102)  
Report of the Interim Head of Corporate Legal Services
- 19. Matters dealt with in accordance with Rule 17 of the Scrutiny Procedure Rules (Call-In and Urgency) of the Constitution** (Pages 103 - 104)  
Report of the Interim Head of Corporate Legal Services

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THIS SET OF MINUTES IS NOT SUBJECT TO "CALL-IN"

## COUNCIL

### MEETING HELD AT THE TOWN HALL, BOOTLE ON THURSDAY 25TH MARCH, 2010

PRESENT: The Mayor (Councillor Doran) (in the Chair)  
The Deputy Mayor (Councillor M Fearn) (Vice Chair)

Councillors Barber, Bigley, Blackburn, Booth, Brady, Brennan, Brodie - Browne, Byrne, Byrom, Cluskey, Colbert, Connell, Cummins, Cuthbertson, Dodd, M Dowd, P Dowd, Fairclough, Lord Fearn, Friel, Glover, Griffiths, Gustafson, Hands, P Hardy, Hough, Howe, Ibbs, D Jones, T Jones, Maher, McGuire, Moncur, Papworth, Parry, Pearson, B Rimmer, D Rimmer, Roberts, Robertson, Shaw, Storey, Sumner, Tattersall, Tonkiss, Tweed, Veidman, Sir Ron Watson, Weavers and Webster

#### 92. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Bradshaw, Fenton, Gibson, Hill, Kerrigan, Larkin, McGinnity, Mahon, C. Mainey, S. Mainey, Platt, Porter and Preston.

#### 93. DECLARATIONS OF INTEREST

No declarations of interest were made.

#### 94. MINUTES

RESOLVED:

That the Minutes of the Council meeting held on 4 March 2010 be approved as a correct record.

#### 95. MAYOR'S COMMUNICATIONS

##### Legal Director - Caroline Elwood

The Mayor reported that this was the last meeting that the Legal Director, Caroline Elwood would be attending before she takes early retirement on 31 March 2010. Mrs. Elwood had been the Legal Director since February 2002 and prior to that, during her Local Government career of 30 years she had worked at a number of Local Authorities in the North West.

The Mayor thanked Mrs. Elwood for her help and support to him personally during his Mayoral Year and for her excellent service to the Council over the past eight years and on behalf of the Council the Mayor extended best wishes to Mrs. Elwood for the future.

# Agenda Item 3

COUNCIL- THURSDAY 25TH MARCH, 2010

## **Councillors Not Seeking Re-Election**

The Mayor reported that this was the last Council meeting before the Council elections on 6 May 2010 and on behalf of the Council he thanked those Members' who were not seeking re-election for their dedicated service to the people of Sefton and extended best wishes to them for the future.

The Mayor also reported that Darren Hardy had resigned as a Councillor on 5 March 2010 and thanked him for his dedicated service to the Borough of Sefton and extended best wishes to him for the future.

## **Nomination for Office of Deputy Mayor Elect 2010/11**

At the invitation of the Mayor, Councillor P. Dowd advised the Council that the Labour Group would be nominating Councillor P. Cummins for the Office of Deputy Mayor Elect 2010/11, to be considered at the Annual Council on 20 May 2010.

Councillor Cummins thanked his colleagues for the nomination.

### PUBLIC SESSION

#### **96. MATTERS RAISED BY THE PUBLIC**

The Mayor reported that members of the public had not submitted any petitions or questions.

### COUNCIL BUSINESS SESSION

#### **97. QUESTIONS RAISED BY MEMBERS OF THE COUNCIL**

The Council considered written questions from Councillors Pearson and Papworth to the Cabinet Member - Leisure and Tourism and a written question from Councillor T. Jones to the Chair of the Southport Area Committee together with the written responses from the Cabinet Member and Committee Chair.

Councillors Pearson and T. Jones each put a supplementary question which was responded to.

#### **98. PERFORMANCE MANAGEMENT FRAMEWORK**

Further to Minute No. 96 of the meeting of the Cabinet Member - Performance and Governance held on 17 March 2010, the Council considered the report of the Assistant Chief Executive on proposals for a new performance management framework for the Council and the Sefton Borough Partnership. The report also highlighted work areas which would require completion in order to successfully implement the proposed framework in the 2010/11 municipal year.



COUNCIL- THURSDAY 25TH MARCH, 2010

It was moved by Councillor Brodie-Browne, seconded by Councillor Blackburn and

RESOLVED: That

- (1) approval be given to the Performance Management Framework set out in Annex 1 to 3 in the report, which would replace the existing framework;
- (2) the provisional implementation plan for the Performance Management Framework set out in Annex 4 of the report be approved and it be noted that this would require changes to be made to the Council Constitution in due course; and
- (3) the Cabinet Member - Performance and Governance be granted delegated authority to move in-year changes to the framework as the Implementation Plan is implemented.

## **99. PROGRAMME OF MEETINGS 2010/11**

Further to Minute No. 323 of the Cabinet meeting held on 4 March 2010, the Council considered the report of the Legal Director which detailed the programme of meetings for the 2010/11 Municipal Year.

It was moved by Councillor Brodie-Browne, seconded by Councillor Blackburn and

RESOLVED: That

- (1) the Programme of Meetings for the Council and Regulatory Committees; Overview and Scrutiny Committees; Area Committees; and Members' Briefings for 2010/11 as set out in Annexes A, B and C of the report be approved subject to deletion of the meeting of the Linacre and Derby Area Committee on 16 August 2010;
- (2) the Programme of Meetings for Cabinet and Cabinet Members, as set out in Annexe D of the report, be noted; and
- (3) the Programme of Meetings for the Sefton Borough Partnership as set out in Annex A of the report be noted.

## **100. ATTENDANCE AT MEETINGS - SECTION 85 OF THE LOCAL GOVERNMENT ACT 1972**

Further to Minute No. 43 of the Council meeting held on 22 October 2009, the Council considered a further report by the Legal Director which requested the Council to approve and authorise the absence of Councillor V. Platt from attendance at Council and Committee Meetings pursuant to Section 85 of the Local Government Act 1972 due to his current ill health.

# Agenda Item 3

COUNCIL- THURSDAY 25TH MARCH, 2010

It was moved by Councillor Robertson, seconded by Councillor Brodie-Browne and

RESOLVED:

That the current absence from all Council and Committee Meetings of Councillor Platt due to ill health be authorised and approved for a further period from the date of this meeting until 6 May 2010, which is the date of the Council elections, pursuant to the provisions of Section 85 of the Local Government Act 1972.

## **101. MEMBERSHIP OF COMMITTEES 2009/10**

Councillor Moncur proposed the following changes:

Overview and Scrutiny Committee (Performance and Corporate Services)

- Councillor Tweed to fill the vacancy on the Committee (following the resignation of Darren Hardy from the Council) and be appointed as the Vice-Chair of the Committee
- Councillor Byrom to be appointed as the Chair of the Committee
- Councillor Kerrigan to be the Substitute Member for Councillor McGinnity on the Committee

Overview and Scrutiny Committee (Health and Social Care)

- Councillor Gustafson to fill the vacancy on the Committee (following the resignation of Darren Hardy from the Council)

Overview and Scrutiny Committee (Regeneration and Environmental Services)

- Councillor Moncur to be the Substitute Member for Councillor Cluskey on the Committee

RESOLVED:

That the proposed changes detailed above be approved.

## **102. MATTERS DEALT WITH IN ACCORDANCE WITH RULE 17 OF THE SCRUTINY PROCEDURE RULES (CALL-IN AND URGENCY) OF THE CONSTITUTION**

The Council received a report of the Legal Director setting out details of those matters dealt with in accordance with Rule 17 of the Scrutiny Procedure Rules (Call-In and Urgency).

COUNCIL- THURSDAY 25TH MARCH, 2010

## **103. NOTICE OF MOTION BY COUNCILLOR M. DOWD**

It was moved by Councillor M. Dowd, seconded by Councillor P. Dowd:

"This Council:

1. acknowledges the success and popularity of the Merseyside Concessionary Travel scheme as administered by Merseytravel. The scheme is a lifeline to many in Merseyside and has done much to enable the social inclusion of older and disabled people within our communities;
2. asks the Government to trial a scheme that would provide free concessionary travel for Young People 18 years and under. This scheme would provide for free travel during term time and during school hours. The Council supports Merseytravel's intention to request the Government to permit it to undertake a pilot of the scheme;
3. calls upon local Conservative Councillors to commit to the continued operation of the current scheme and its funding, especially in the light of the proposed swingeing cuts proposed by the Conservative Party nationally to public expenditure;
4. also acknowledges the success of the English National Concessionary Travel scheme that provides free travel on buses, and calls on the Government to continue funding this by direct grant to Integrated Transport Authorities such as Merseytravel."

An amendment was then moved by Councillor Sir Ron Watson and seconded by Councillor Papworth that the motion be amended by the deletion of the text in part 3 of the motion and the substitution of the following text:

- (a) recognises the significant contribution made in particular by the then Conservative Leader of the Council and the Chairman of the Policy and Resources Committee to the introduction of the Concessionary Travel Scheme and to acknowledge that without their actions it would have been very difficult to progress the scheme on a pan Merseyside basis;
- (b) considers that a joint approach to address the need for Sefton Council to constructively play its part in reducing the unprecedented levels of National debt will be a priority for the Council and confirms that this will be done in a pragmatic and practical manner requiring mature behaviour by all Political Parties on the Council."

On a show of hands, the Mayor declared that the amendment was lost by 36 votes to 14 with 2 abstentions.

# Agenda Item 3

COUNCIL- THURSDAY 25TH MARCH, 2010

The requisite number of Members having signified their wish that the voting on the Substantive Motion should be recorded in accordance with Rule 18.4 of the Council and Committee Procedure Rules, the voting was duly recorded and the Members of the Council present at the time, voted as follows:

## FOR THE SUBSTANTIVE MOTION:

Councillors Blackburn, Booth, Brady, Brennan, Brodie-Browne, Byrne, Byrom, Cluskey, Colbert, Connell, Cummins, Dodd, M. Dowd, P. Dowd, Fairclough, M. Fearn, Lord Fearn, Friel, Gustafson, Hands, P. Hardy, Hough, Howe, McGuire, Maher, Moncur, B. Rimmer, D. Rimmer, Robertson, Shaw, Sumner, Tattersall, Tonkiss, Tweed, Veidman, Weavers and Webster.

## AGAINST THE SUBSTANTIVE MOTION:

None.

## ABSTENTIONS:

Councillors Barber, Bigley, Cuthbertson, Doran, Glover, Griffiths, Ibbs, D. Jones, T. Jones, Papworth, Parry, Pearson, Roberts, Storey and Sir Ron Watson.

The Substantive Motion was carried by 37 votes to none with 15 abstentions and it was

## RESOLVED:

This Council:

1. acknowledges the success and popularity of the Merseyside Concessionary Travel scheme as administered by Merseytravel. The scheme is a lifeline to many in Merseyside and has done much to enable the social inclusion of older and disabled people within our communities;
2. asks the Government to trial a scheme that would provide free concessionary travel for Young People 18 years and under. This scheme would provide for free travel during term time and during school hours. The Council supports Merseytravel's intention to request the Government to permit it to undertake a pilot of the scheme;
3. calls upon local Conservative Councillors to commit to the continued operation of the current scheme and its funding, especially in the light of the proposed swingeing cuts proposed by the Conservative Party nationally to public expenditure;

COUNCIL- THURSDAY 25TH MARCH, 2010

4. also acknowledges the success of the English National Concessionary Travel scheme that provides free travel on buses, and calls on the Government to continue funding this by direct grant to Integrated Transport Authorities such as Merseytravel.

#### **104. NOTICE OF MOTION BY COUNCILLOR P. DOWD**

It was moved by Councillor P. Dowd and seconded by Councillor Moncur:

"That the Council agrees to review its consultation processes in relation to a number of issues of public concern. This Council recognises that consultation on the imposition of charges for services, particular those affecting the most vulnerable in our community, should be undertaken as widely as possible. In addition, the Council should produce its own consultation protocol in relation to such matters. This Council also agrees that issues that have a significant bearing on the wider community should also be the subject of more comprehensive consultation. The recent discussions in a Council meeting concerning the lifting of the moratorium in relation to the placing of mobile phone masts, is a case in question.

Finally, in relation to the development of a protocol for consultation, Area Committees should be asked for their views with respect to this matter."

It was then moved by Councillor Brodie-Browne and seconded by Councillor Blackburn that the motion be amended by the addition of the following text at the end of the motion:

"Notwithstanding the above, the Council endorses the principles in the 'Your Sefton Your Say' process."

Following further debate, Councillor P. Dowd indicated that he accepted the amendment.

On a show of hands, the Mayor declared the Substantive Motion was carried by 36 votes to 14 with 2 abstentions and it was

**RESOLVED:**

That the Council agrees to review its consultation processes in relation to a number of issues of public concern. This Council recognises that consultation on the imposition of charges for services, particularly those affecting the most vulnerable in our community, should be undertaken as widely as possible. In addition, the Council should produce its own consultation protocol in relation to such matters. This Council also agrees that issues that have a significant bearing on the wider community should also be the subject of more comprehensive consultation. The recent discussions in a Council meeting concerning the lifting of the moratorium in relation to the placing of mobile phone masts, is a case in question.

# Agenda Item 3

COUNCIL- THURSDAY 25TH MARCH, 2010

Finally, in relation to the development of a protocol for consultation, Area Committees should be asked for their views with respect to this matter.

Notwithstanding the above, the Council endorses the principles in the 'Your Sefton Your Say' process.

# Agenda Item 9

**REPORT TO:** Council

**DATE:** 13 May 2010

**SUBJECT:** Governance Review – Proposed revisions to the Constitution to reflect changes to geography of Crosby and Linacre and Derby Area Committees

**WARDS AFFECTED:** Church

**REPORT OF:** Alan Lunt, Neighbourhoods and Investment Programmes Director

**CONTACT OFFICER:** Steph Prewett, Assistant Director  
Neighbourhoods and Investment Programmes

**EXEMPT/ CONFIDENTIAL:** No

**PURPOSE/SUMMARY:**

To set out proposed changes to the Constitution to reflect the changing geographies of Crosby and Linacre and Derby Area Committees

**REASON WHY DECISION REQUIRED:**

To allow the new structures to be implemented from the new Municipal year dovetailing with the timescales for the development of Area Management and progressing area based governance structures.

**RECOMMENDATION (S):**

That Council is requested to approve the proposed changes to Page 7 and Article 10 of the Constitution as set out in Section 2 of this report to take effect at the start of the 2010/11 Municipal Year (May 2010 to April 2011)

**KEY DECISION:** Yes

**FORWARD PLAN:** Relates to forward plan for decision made at Cabinet and Council 4<sup>th</sup> March

**IMPLEMENTATION DATE:** Following expiry of the call in of the minutes of this meeting.

**ALTERNATIVE OPTIONS:**

To retain Church ward within the Crosby Area Committee boundary, however, this disregards the obvious similarities between the characteristics and demographics of Church ward and Linacre ward potentially impacting upon progress of Area Management and how it supports Church

**IMPLICATIONS:**

**Budget/Policy Framework:** .

**Financial:** There are no direct financial implications arising from this report

# Agenda Item 9

<b><u>CAPITAL EXPENDITURE</u></b>	<b>2006/ 2007 £</b>	<b>2007/ 2008 £</b>	<b>2008/ 2009 £</b>	<b>2009/ 2010 £</b>
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

**Legal:** The composition of Area Committees is set out in the Constitution

**Risk Assessment:** None.

**Asset Management:** None

**CONSULTATION UNDERTAKEN/VIEWS:**

Legal and Democratic Services  
 Governance Review Working Group  
 Church Ward Members  
 Church Ward Forum  
 Area Committee Chairs Crosby and Linacre and Derby

**All have been in favour the change in the arrangements.**

**CORPORATE OBJECTIVE MONITORING:**

<b><u>Corporate Objective</u></b>		<b><u>Positive Impact</u></b>	<b><u>Neutral Impact</u></b>	<b><u>Negative Impact</u></b>
1	Creating a Learning Community	√		
2	Creating Safe Communities	√		
3	Jobs and Prosperity	√		
4	Improving Health and Well-Being	√		
5	Environmental Sustainability	√		
6	Creating Inclusive Communities	√		
7	Improving the Quality of Council Services and Strengthening local Democracy	√		
8	Children and Young People	√		

**LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT**

Cabinet and Council Report 4 March 2010 - Governance Review – Workstreams on the Sefton Borough Partnership and Area Management  
 Sefton State of the Borough Core Evidence Report



# Agenda Item 9

## 1. **Background**

- 1.1 The commitment to move towards Area Based Governance Structures was agreed by Cabinet and Council on 4 March 2010
- 1.2 A review of Area Committees and their relationship with Council and Sefton Borough Partnership considered geographical boundaries and representation
- 1.3 The Sefton State of the Borough Core Evidence report drew out some of the key issues affecting different areas of the Borough, this highlighted some of the similarities and disparities between wards.

## 2. **Proposed changes to the Constitution in relation to Area Committees**

- 2.1 Page 7 sets out the titles of each Area Committee and Article 10 of the Constitution details the composition of Area Committees.
- 2.2 Within the current constitution Church ward is part of the Crosby Area Committee; the proposed changes to Article 10 suggest moving Church ward from Crosby into Linacre and Derby Area Committee.
- 2.3 This would result in the following amendments being made for Article 10 and Page 7:
- The composition of Crosby Area Committee would be Councillors for Blundellsands, Manor and Victoria Wards plus non-voting Parish Council representative for Hightown, Sefton and Thornton
  - A revised Linacre and Derby Area Committee to be renamed Linacre, Church and Derby composed of Councillors for Derby and Linacre and Church Wards
- 2.4 Both Area Committees would retain 6 spaces for Advisory Group representatives

## 3. **Reasons for proposed amendments**

- 3.1 Consideration has been given to pros and cons for the proposed amendment, the following table outlines these points:

<b>Reasons for</b>	<b>Reasons against</b>
Church Ward has a number of similarities to other wards in south Sefton and so would benefit from being aligned to an area committee with similar agendas	Church has historically been part of Crosby Area Committee
Seaforth currently suffers from an artificial boundary split – aligning with Linacre and Derby would enable Seaforth to be seen as a whole	Does not align with Police boundaries
Would minimise the risk of local issues affecting Church ward being lost in the very different context of other areas of Crosby	May present a split in terms of geography for Waterloo?
Would put greater weight behind seeking resolution to issues that have natural similarities with wards in the south of the Borough	Implications for advisory group representatives – would have to revise current membership in Linacre and Derby
Aligns with Children, Schools and Families area boundaries	

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Would benefit more strongly from joined up approaches	
Greater potential to attract resources	
Better alignment with HMR boundaries	
Resident involvement – majority of residents would associate more closely with south Sefton	

3.2 The above demonstrates a persuasive argument for moving Church ward across from Crosby Area Committee and incorporating it into Linacre and Derby Area Committee

## **4.0 Recommendation**

That Council is requested to approve the proposed changes to Page 7 and Article 10 of the Constitution as set out in Section 2 of this report to take effect at the start of the 2010/11 Municipal Year (May 2010 to April 2011)

# Agenda Item 13

**REPORT TO:** Cabinet  
Council

**DATE:** 15<sup>th</sup> April 2010  
13<sup>th</sup> May 2010

**SUBJECT:** Delegation of Powers in respect of the Discretion to Grant Equity  
Re-location Loans in the Housing Market Renewal Area

**WARDS AFFECTED:** Linacre, Derby, Netherton & Orrell, Church, Litherland

**REPORT OF:** Alan Lunt – Neighbourhoods and Investment Programmes  
Director 0151 934 4580

**CONTACT OFFICER:** Alan Lunt – Neighbourhoods and Investment Programmes  
Director 0151 934 4580

**EXEMPT/  
CONFIDENTIAL:** No

**PURPOSE/SUMMARY:**

To seek approval from Cabinet and Council to delegate powers and duties related to the provision of loans to facilitate re-housing as part of the Newheartlands Housing Market Renewal Programme

**REASON WHY DECISION REQUIRED:**

Authority to approve applications for loans to facilitate re-housing is delegated by the Newheartlands Pathfinder to a discretionary panel comprising of representatives of Liverpool City Council, Wirral Council and Sefton Metropolitan Borough Council. At present, there is no provision within the Council's constitution to delegate authority for such decision making to an external panel exercising its discretion to approve loans outside of the agreed policy parameters. Delegating Authority to approve such discretion to the Director responsible for Housing Market Renewal in Sefton will prevent the need to obtain discretionary approval from Cabinet from every decision that involves the use of the Council's Housing Market Renewal or Capital Programme resources in this regard.

**RECOMMENDATION(S):**

That Cabinet be requested to recommend to the Council that part 3 (Responsibility for Functions) of the constitution be amended by the addition of the following :-

**REGENERATION**

**E : Housing Market Renewal Director**

**Power** to deal with all matters relating to the provision of loans to facilitate re-housing as part of the Newheartlands Housing Market Renewal Programme

**Subject to:**

- 1) An approved budget for such financial assistance being available, and;

# Agenda Item 13

2) Power to amend the criteria used when making awards of financial assistance provided that such decisions and the grounds for them are reported promptly to the Cabinet Member Regeneration.

**KEY DECISION:** No

**FORWARD PLAN:** No

**IMPLEMENTATION DATE:** Immediately following the expiry of the call in period for the minutes of the relevant meetings

**ALTERNATIVE OPTIONS:**

The council could leave all the decisions in relation to the approval of applications for these loans to the representatives of Liverpool City and Wirral Councils

These decisions could be made by a Cabinet Member being appointed on to the discretionary panel

If delegated authority is not provided, each approval will need to be reported to Cabinet.

**IMPLICATIONS:**

**Budget/Policy Framework:** None

**Financial:** The provision of loans has been approved as part of the Housing Market Renewal Financial Programme 2008-2010 and will form part of the approval for the 2010-2011 programme which will be presented to members at a future meeting of Cabinet. There are therefore, no financial implications involved in this report.

<b><u>CAPITAL EXPENDITURE</u></b>	<b>2009 2010 £</b>	<b>2010/ 2011 £</b>	<b>2011/ 2012 £</b>	<b>2012/ 2013 £</b>
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

**Legal:** Provision of delegated authority requires the amendment of the Council’s Constitution as there is no provision for the Council to fully perform its duties on the discretionary panel.

**Risk Assessment:** No specific risk assessment has been carried out in respect of this matter as general programming issues are covered within the Departmental risk assessment

**Asset Management:** N/A

**CONSULTATION UNDERTAKEN/VIEWS**  
 Legal Director  
 Acting Finance Director (Internal Audit) FD 318 - The Acting Finance and Information Services Director has been consulted and has no comments on this report

**CORPORATE OBJECTIVE MONITORING:**

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Creating Safe Communities	✓		
3	Jobs and Prosperity	✓		
4	Improving Health and Well-Being	✓		
5	Environmental Sustainability		✓	
6	Creating Inclusive Communities	✓		
7	Improving the Quality of Council Services and Strengthening local Democracy	✓		
8	Children and Young People		✓	

**LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT**

Report - Cabinet Member Regeneration – 7<sup>th</sup> September 2005 – ‘Amendments to Sefton’s Private Sector Housing Assistance Policy’

# Agenda Item 13

## 1.0 Background

- 1.1 Within the Housing Market Renewal (HMR) programme, a budget has been set aside for the provision of equity loans to re-locating owner occupiers. The equity loans process developed by the Newheartlands HMR Pathfinder sets out clear criteria relating to eligibility and the level of financial assistance to be granted to enable owner occupiers to bridge the gap between the amount that they can raise and the cost of a new property.
- 1.2 The agreed Newheartlands policy allows for discretion in the award of loans in the case of appropriate unusual or special circumstances. As a result, during 2004, Newheartlands established a 'Discretionary Panel' to consider cases where this discretion might apply. This Panel may also make recommendations from time to time to the Monitoring and Steering Group established by NewHeartlands to change the criteria, where there are appropriate reasons to do so. The Panel includes officer representation from Liverpool, Wirral and Sefton Councils.
- 1.3 One of the criterion states that in order to be eligible for a loan, the new property must be located within the boundaries of the Pathfinder Authority awarding the loan. As part of an Internal Audit of the Housing Market Renewal Initiative (HMRI) undertaken in the autumn of 2009, the Auditor identified that two equity loans had been awarded by the Discretionary Panel to enable residents to purchase properties outside the borough. These awards were consequently outside of the approved criteria.
- 1.4 The report approved by Cabinet Member Regeneration on the 7<sup>th</sup> September 2005 contained the procedures to be followed and included the following statement:  
  
*"A Discretionary Panel consisting of a representative from NewHeartlands and the three local authorities has been established to consider cases that arise from owner occupiers that fall outside the criteria. The Panel will review the policies and procedures in the light of such cases and will recommend to the Monitoring and Steering Group changes to the criteria. Any owner occupier who is unhappy with the decision of the Discretionary Panel can appeal to a Appeals Panel whose decision will be final."*
- 1.5 Elsewhere in the same report, it states:  
  
*"The new property must be located within the boundary of Sefton. There is discretion for the Local Authority to waive this criteria in special circumstances approved by the Cabinet Member/ Director"*.
- 1.6 In relation to the locations in which it is possible to purchase property with the assistance of such loans, the current (July 2009) Private Sector Housing Assistance Policy states:  
  
*Such Loans will normally be approved for the acquisition of a replacement home within the Sefton boundary or within the Newheartlands HMRI area. The Council has the discretion to waive this restriction in the event of special circumstances where the applicant needs to move elsewhere to provide care or live close to a carer.*
- 1.7 This does not make clear who has the authority to exercise this discretion, and there is clearly scope for confusion in these statements. Indeed the second does not make clear where the delegation lies or whether there is a joint decision to be made. It is therefore necessary to clarify the matter.

- 1.8 As a practical matter, approval of equity loans following applications are generally required as a matter of urgency to ensure that the owner-occupiers concerned are able to proceed to agree terms for the house purchase they are making without unnecessary delay.
- 1.9 It is also appropriate that, where equity loans are being made in circumstances outside of the normal criteria, these decisions should be subject to an appropriate level of scrutiny. It is therefore recommended that such approvals are reported retrospectively for information to the Cabinet Member Regeneration. In addition any changes to the criteria to be applied generally which are approved by the Monitoring and Steering Group should be similarly reported. In this way, the awarding of equity loans can proceed without unnecessary delay, but with appropriate scrutiny and an opportunity for any concerns to be expressed.
- 1.10 An example of where such discretion may be applied is in the case of an individual who wishes to be re-housed outside of Sefton in order to be nearer to a relative for whom they are the main carer. Where there is clear evidence of such circumstances applying, it would be unreasonable to refuse such a request, in circumstances where the Council is removing their current home by compulsory means, whether or not it was outside of the normal policy provision.
- 1.11 The financial risks to the Authority are low as each equity loan is secured on the property purchased. Funding to provide equity loans is approved annually by Cabinet as part of the Housing Market Renewal programme.

## **2.0 Conclusion**

- 2.1 Delegation of responsibility for approving discretionary equity loans to the Neighbourhoods and Investment Programmes Director will empower the Newheartlands Discretionary Panel to make effective decisions regarding the award of loans whilst ensuring effective governance by requiring loans granted utilising discretion to operate outside of the agreed policy, to be reported on an individual basis to Cabinet Member Regeneration.

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# Agenda Item 14

**REPORT TO:** Cabinet Member Regeneration  
Cabinet  
Council

**DATE:** 14 April 2010  
15 April 2010  
13 May 2010

**SUBJECT:** Enforced Sales Procedure and Property at 24 Lander Road,  
Litherland

**WARDS AFFECTED:** All

**REPORT OF:** Alan Lunt – Neighbourhoods and Investment Programmes  
Director

**CONTACT OFFICER:** Neil Davies - Housing Market Renewal Division Strategy  
Manager 934 4837

**EXEMPT/  
CONFIDENTIAL:** No

**PURPOSE/SUMMARY:** To seek approval to the new 'Enforced Sales' Procedure, and in particular to utilise this procedure in respect of a long-term empty property at 24 Lander Road, Litherland.

**REASON WHY DECISION REQUIRED:**  
Cabinet has delegated authority to make decisions in respect of the adoption of such policies

**RECOMMENDATION(S):**

That Cabinet Member Regeneration notes the report

That Cabinet

1. Approves the use of Enforced Sale powers and the Policy and Procedures as set out in the attached Guide.
2. **Recommends the Council to amend the Constitution so that the Cabinet Member -Regeneration has delegated powers to authorise the use of the Enforced Sales Procedure**
3. Approves the use of the Enforced Sales Procedure in respect of the property at 24 Lander Road, Litherland.

**KEY DECISION:** No

**FORWARD PLAN:** No

**IMPLEMENTATION DATE:** Upon expiry of the call-in period of the Cabinet Meeting.

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**ALTERNATIVE OPTIONS:** The Council has already introduced a new Empty Property Strategy, which outlines various options to attempt to return empty homes back into use.

In the case of 24 Lander Road, enforcement notices and works in default have been carried out in the past, to control the negative effects of dilapidation caused by this property. However, the owner has never responded to these actions and the house remains empty. The Council could exercise its use of Compulsory Purchase Powers, but in this instance Enforced Sale is considered the most appropriate option to take, particularly to recoup the debts owed. Alternatively the Council could choose to take no further action, but the house would remain empty and debts to the Council would remain owed.

**IMPLICATIONS:**

**Budget/Policy Framework:**

The Empty Properties Strategy was approved by Cabinet in October 2009, which included the use of ‘Enforced Sales’ as one of a number of enforcement tools the Council may utilise.

**Financial:**

Successful Enforced Sales will generate payments of historic debts that are owed due to enforcement actions and work in default undertaken on properties. In the case of 24 Lander Rd, debts totalling £13,411 will be repaid from the sale proceeds. However, the Council may need to provide a grant to support refurbishment of the property and its return to use as a social housing unit, for which the Council will receive tenancy nomination rights. The cost of any such grant can be met from existing capital resources.

<b><u>CAPITAL EXPENDITURE</u></b>	<b>2009 2010 £</b>	<b>2010/ 2011 £</b>	<b>2011/ 2012 £</b>	<b>2012/ 2013 £</b>
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources (HMR & WNF)				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? <u>Y</u> /N	When? HMR March 2011			
How will the service be funded post expiry?	No ongoing service implications			

**Legal:** The Council will be exercising its legal powers under the Law of Property Act 1925, which gives the Council the statutory power to recover costs it has incurred through works in default by enabling the sale of a property to an organisation committed to ensuring it is improved and occupied.

**Risk Assessment:** During the Enforced Sales Process the property owner may repay the debts owed. While this would satisfy one objective (debt repayment) it does not necessarily mean that the owner will refurbish a property or return it to use and occupation

**Asset Management:** The procedure involves the Council facilitating the sale of a privately owned property to a third party. Hence there are no implications for the Council's Asset Management, as properties are not owned by the Council

## CONSULTATION UNDERTAKEN/VIEWS

The Empty Homes Strategy was the subject of stakeholder consultations prior to its approval.

The property at 24 Lander Rd has been a priority issue and a topic of on-going consultation with local residents groups.

FD 359 - The Head of Corporate Finance & Information Services has been consulted and his comments have been incorporated into this report

## CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Creating Safe Communities	✓		
3	Jobs and Prosperity		✓	
4	Improving Health and Well-Being			
5	Environmental Sustainability	✓		
6	Creating Inclusive Communities			
7	Improving the Quality of Council Services and Strengthening local Democracy		✓	
8	Children and Young People		✓	

## LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Empty Property Strategy (Housing) approved by Cabinet on the 29th October 2009.

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## **1. Background**

- 1.1. Cabinet approved a new Empty Property (Housing) Strategy at its meeting of the 29<sup>th</sup> October 2009. The Strategy sets out a number of Enforcement Actions, which are available for the Council to utilise within existing legal powers. However, the report also noted that "...implementation (of the strategy) will require a number of procedures and new practices to be developed by officers."
- 1.2. Enforced Sales is a new practice for Sefton, though it has been used by a number of Councils across the country. It is a procedure primarily designed to enable Councils to recover outstanding debts, created by certain enforcement actions that result in land charges against a property. However, it also provides a method for getting long-term, problematic empty properties back into use.
- 1.3. Officers have produced a new Standard Operating Procedure, attached to this report, which provides a complete description of the process and roles involved. Given that this is a new procedure, officers have brought this to the attention of Cabinet for approval, and to avoid any future challenges from property owners on the basis that the Council has not fully considered and approved it's policy and procedures in respect of Enforced Sales.

## **2. Empty Property at 24 Lander Road, Litherland**

- 2.1. This property has been vacant since about 1981. The property is not registered at the Land Registry, but local investigations have revealed the identity of the person believed to be the legal owner. A number of lines of investigation, over many years, have been pursued to try and trace the owner, including via known family members. However, all of these efforts have so far failed.
- 2.2. Over the long period that the property has been vacant, it has been subject to break-ins, vandalism, infestation, fly-tipping, all of which have had a detrimental affect on neighbours and the general neighbourhood. The Council has had to intervene to take various actions to control the negative impact of this property. This has resulted in numerous notices being served, and works in default undertaken.
- 2.3. A large number of local land charges are recorded against this property. In this instance those charges resulting from service of Statutory notice under Section 4 of the Prevention of Damages by Pests Act 1949, over the past 12 years will be recoverable. It should be noted that there are other land charges, which are either older than 12 years, or served under 'non-qualifying' legislation, which are not recoverable using this procedure. There are seven land charges which will be recoverable, the total value of which is £13,411.
- 2.4. Given the level of debt owed to the Council, our inability to trace the property owner, the length of time the property has been vacant and the condition of the property, Enforced Sale is considered to be the most appropriate course of action to take.
- 2.5. In this instance it is likely that a sale will be made to a partner HMR Neighbourhood RSL. A further, more detailed report will be submitted to Cabinet Member Regeneration on these arrangements. However, early feasibility has indicated that a Council grant towards the cost of refurbishment to bring the property back into use, might be required. External Housing Market Renewal Capital Funding could be made available to support the Council grant.

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- 2.6. Should the enforced sale be completed to a partner RSL, they would be required to completely refurbish the property and bring it back into use as a social rented home, which would be made available to a Council waiting list nominee.

# ENFORCED SALE

## POLICY AND STANDARD OPERATING PROCEDURE

## **Introduction**

Enforced sale is a procedure that is primarily designed to enable councils to recover outstanding debts, created by actions that result in a land charge against a property. However, it also provides a method for getting long term problematic properties back into use and has been adopted by a number of Councils across the country as an effective way of dealing with empty properties.

There are social and financial benefits from adopting the enforced sales procedure. By selling a property that is in a derelict condition to a new owner, there is a likelihood the new owner will refurbish the property and this increases the chances that it will become inhabited again. Financial charges, which could otherwise prove impossible to recover, can be discharged out of the proceeds of sale. It is also hoped that when empty property owners become aware of this initiative they may maintain their properties in a reasonable state and condition resulting in less time spent by the local authority in having to deal with this problem.

A cross departmental enforced sales working group will be created to finalise procedural arrangement details within the Enforced Sales Policy and Standard Operating Procedure. The group will also identify suitable property, take appropriate action and identify existing debts. The group will consist of Officers from Neighbourhoods and Investment Programmes, Planning, Building Control, Legal and Finance Departments.

## **Limitations of the Procedure**

The issues surrounding the empty condition of a property vary so widely that no single measure offers a tailor made solution. Even where the following criteria can be met, it is necessary to consider how likely the Enforced Sales Procedure is to achieve the desired outcome and to ask whether other courses of action might be more suitable.

The Enforced Sales Procedure can be followed even where the owner cannot be traced and even where the property has changed hands – so long as the relevant debt remains.

The procedure may be used to recover debt arising from the exercise of any statutory powers that: -

- Confer a charge on all the estates and interests in the property
- Confer Law of Property rights (i.e. grant the powers and remedies available as if the charge had been created by deed).

Any such charge will bind any prior charges affecting the property, i.e. the council's charge will have a priority over other charges. However, covenants and easements over the property will not be so bound.

If the statutory powers under which the debt has arisen do not confer the above-mentioned rights, then it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 applies. If it does, then the procedure may still be used, but

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only the estate of the offending party will be bound, not all the states and interests in the property. Other charges may therefore take priority over the council's charge.

Principally, the statutory powers that will enable the procedure to be used are: -

- Prevention of Damage by Pests Act 1949
- Housing Act 1985
- Building Act 1984
- Public Health Act 1936
- Public Health Act 1961
- Environmental Protection Act 1990

Actions in relation to the service of statutory notices under these provisions are most likely to have given rise to the relevant debt(s).

Additionally, the following criteria will be applied when considering whether to instigate the procedure: -

- The principle sum of the original work carried out in default must be at least £300. (This can be the total of a number of combined principle sums)
- **The statutory notices must have been served correctly.** Refer to the relevant statute for the requirements relating to service. All copy notices must have been stamped and signed by the serving officer. The procedure cannot be employed if the notices have not been served in this manner. (If the serving officer is still employed by the council, then it may be possible to ask them to rectify the notice).
- *The serving officer must complete a 'Record of Service of Notice' form on service of the statutory notice.*
- There should be no proposed CPO action within a 2-year period.
- The property must not be the subject of any bankruptcy action. (This would usually be noted on the title).

It should be noted that the right to enforce a sale in order to recover land charges is limited by section 20 of the Limitation Act to 12 years from *when the right to receive the money accrued*, **not** from when the demand was sent out. *However*, where the owner has attempted to repay and any amount has been received, the 12 year period starts afresh from that date.

Properties shown as Unregistered using the On-line Link to the Land Registry

The following key considerations arise in such cases: -

- Where the statutory charge does not bind all the estates and interests in the property, it would probably be inadvisable to proceed unless it is certain that there are no prior charges and that the statutory charge binds the freehold or a long lease.
- It will be necessary for the eventual purchaser of the property to apply for first registration of the title. Difficulties might arise in determining the extent of the land to be registered and in identifying the encumbrances affecting the property.



## Human Rights Act 1998

Consideration of the provisions of the Human Rights Act 1998 must be taken by the Council. In particular, Part 1, Article 8 “the right to respect for... private and family life..., home and... correspondence”, and Protocol 1, Article 1 “peaceful enjoyment of ... possessions”, need to be balanced against the general benefits and rights of neighbours and the surrounding community.

A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate, in accordance with the Act, should be included in letters to the Owner and Charges. This will be covered by correspondence issued by Legal Services.

### **Pre-Action to ESP**

Other, more appropriate, types of action, must always be a consideration prior to pursuing ESP. The use of ESP (as well as Compulsory Purchase) should be seen as a means of last resort and it is expected that all informal and formal action will have been taken and exhausted by the Council in order to recover debt and to resolve the existence of the empty property and its associated problems.

The first priority should is always to try and trace owners of empty property and to make contact with them. Every effort is made to try and engage with the owners and to offer them advice and assistance in getting their property back into use. Evidence has shown that early intervention offering support and guidance to property owners can prove very useful in preventing longer-term properties becoming more problematic. Indeed in most cases solutions reached through negotiation and agreement are preferable to enforcement related solutions that are, by their nature, more difficult, expensive and time consuming to undertake.

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## Neighbourhoods and Investment Department (NIPD)/ Case Officer Role

1. Identify potential properties for enforced sales
  - a. Proactive
  - b. Reactive
  
2. Is property suitable for enforced sales
  - a. Is the property empty
  - b. Is property registered at land registry
    - i. If not registered or to check for other interested parties carry out the following additional checks:
      - Council tax records
      - Sending or affixing a letter to the property concerned
      - Make enquiries with neighbours
      - Make enquiries with other departments who may have been involved with the property / historical information
      - Check electoral registered
  - c. Does property have financial local land charges registered against it (at least £1,000)
  
3. Compile a background file.
  - a. This needs to contain copies of:
    - i. All statutory notice served prior to the Council carrying out the necessary works in default together with the details as to how the notices were served
    - ii. The record of service of notice form
    - iii. The work instructions to the contractor for the work to be carried out
    - iv. All invoices from the contactors along with breakdown of labour and material charges
  - b. These documents are filed in reference number, together with an account summary sheet which shows what is in the file, the notice number and the amount of financial charge, excluding interest, in each case.
  - c. Also in the file are copies of any ownership details, local land charge details and any correspondence sent or received relevant to the property.
  
4. The Enforced Sales Group (NIPD, Finance, Legal Officers) should now agree whether or not to develop the process further.
  
5. Re-service of notices.
  - a. All the notices originally served and notices of demand for payment are re-served on the property (with covering letter - Appendix 1). This will ensure that an owner or interested party is made aware of the debt and also ensures that there is adequate evidence available. Notices will be served by the following methods:
    - i. One must be served on the listed owner or owners by first class post, or by hand, or by affixing it to the property and
    - ii. One must be posted to any other address(es) shown on the Land Registry and to any other interested party of which the Council is aware.

- iii. Copies must be stamped and signed by the serving officer.
  - iv. A 'Record of Service of Notice' form must be completed for each by the serving officer.
  - v. A photograph must be taken as evidence of any notices affixed to the property and weekly visits should be made in order to replace any notices that have been torn down.
  - b. Also at this point any notices needed to be served under section 81A Environmental Protection Act 1990 are served (see Appendix 2 for sample 81A).
6. Section 103 notice.
- a. After a period of 28 days if no appeal (as to the Section 81A notice) or payment is made, a notice pursuant to Section 103 of the Law of Property Act 1925 is then served. This notice gives the owner three months to repay the debt.
  - b. The property cannot be sold until the Section 103 notice has expired, but during this time the procedure is progressed through the various stages as far as possible.
  - c. The Section 103 Notices are divided into 2 categories:
    - i. Where notices pursuant to Environmental Protection Act 1990 have been served (see Appendix 3).
    - ii. Where no notices pursuant to Environmental Protection Act 1990 have been served (see appendix 4).
  - d. When serving the notices, a photograph is taken of the property and copies of all the notices served and confirmation of the method of service are attached to the property file and onto the Flare database.
7. Authorisation
- a. Following the expiry of the 3 month period a check needs to be made with the Debt Recovery Team to ascertain whether or not the debt has been paid.
  - b. If the debt has not been paid the officer must review the case with the Section Manager. The review should include consideration of whether the property should be sold to a preferred owner or whether it should be sold at auction.
  - c. If following this review, it is decided that the Enforced Sales Procedure should be followed to its conclusion, the Officer / Section Manager must prepare an authorisation form which, together with the background file, is passed to the Director of Neighbourhoods and Investment Programmes for authorisation under delegated powers (this authority is delegated to Cabinet Member Regeneration by resolution of the Council approval to this Procedure).
  - d. Authorisation and file returned to Case Officer.
6. The Solicitor / Debt Recovery Team is instructed
- a. A copy of the authorisation and the file are then forwarded to the appropriate Debt Recovery Team / Legal Team.
  - b. The Legal team are responsible at this stage to send an instruction to the Debt Recovery Team to:

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- i. Suspend all legal action regarding the debt
- ii. Check the account numbers of the outstanding debts to make sure no payments have been received to date.
- c. Case Officers should continue to make on-going checks at weekly intervals in order to ensure no re-payment has been made.

## **Solicitors role when the property is registered at Land Registry**

7. Check the charges
  - a. Upon receipt of the file from the NIPD Case Officer, go through the Works in Default file and make a list of all the charges. A check then needs to be carried out to find out which charges are still outstanding.
  - b. This is done as there are many ways debts can be paid and there is little point in undertaking work where a charge has been repaid.
  - c. Checks should also be made that the statutory notices have been correctly served.
8. Write to all interested parties
  - a. If charges are still outstanding a letter (see appendix 7) is sent to all persons on the register who have an interest in the property advising them of the position. This will include others who have a charge registered against the property.
  - b. The letter must be copied to the Case Officer for information, who must take a photograph of any notices affixed to the property and carry out weekly visits in order to replace any notices that may have been torn down.
  - c. This letter gives the owner and any other interested parties fair notice of the steps the Local Authority proposes to take. It is accepted that in most cases the whereabouts of the owner will be unknown. Even so a letter addressed to the property and any other address(es) is sent in an attempt to notify the owner. Every attempt is made to give such persons notice of the local Authorities proposals and ample opportunity to repay the debt.
  - d. A period of 21 / 28 days is allowed for the persons served to respond.
9. Registration of charge (this may alter depending on the reaction received from Land Reg – this procedure is one currently used by Manchester with the Lytham District Land Reg)
  - a. If there is no response to the letter and no debts have been repaid then a charge must now be registered with the Land Registry.
  - b. A resolution for the relevant charge(s) must be prepared and be sealed by the Council (see appendix 8). This must record:
    - i. The statutory provisions
    - ii. The service of the necessary notices
    - iii. What work was done and when
    - iv. The registration of the charge in the register of local land charges and claims priority over all estates and interests

- v. A certificate made by the council that it has all the necessary rights and powers to make the application for registration of the charges and that it has taken all appropriate steps in accordance with the relevant statute.
  - c. An application (form AP1) (see Appendix 9 for sample copy) must be prepared for registration of the charge. The current registration fee is £40 per charge provided each charge does not exceed £100,000. (in practice it is only necessary to register a single charge and there may be benefit in so doing since there is a cost of £40 per charge registered. On the other hand, if the owner elects to repay the debt, then he is only bound to pay the charge that has been registered)
  - d. Form SC (see appendix 10 for sample copy) must also be completed in order to claim priority in favour of the council's charge over any existing charge registered against the title.
  - e. The completed application must be sent to Land Registry. This comprises of:
    - i. A covering letter (see appendix 11)
    - ii. The sealed and dated resolutions together with a certified copy of each resolution
    - iii. The land/charge certificate or copies of the correspondence requesting the same
    - iv. Completed form SC
  - f. Confirmation of the application must be provided to the Housing Officer.
10. The charges are registered
- a. Notification of completion of the registration is received from Land Registry on completion of the registration – arrangements are then made for the sale of the property.
  - b. At this point:
    - i. A check is made that the charges have not been paid
    - ii. The Case Officer must be informed of the registration and must be asked whether the property is to be sold at auction or to a preferred purchaser.
  - c. Letters are then sent to the owners and interested parties advising them that the Council's charges are registered and it is the Council's intention to pursue a sale of the property (see appendix 12). This gives the owner and interested parties notice of the Council's intentions so that they cannot claim steps were not taken to notify them.
  - d. The letter must be copied to the Case Officer for information and they must take a photograph as evidence of any notices affixed to the property and weekly visits should be made in order to replace any notices that have been torn down.

## **Solicitors role when the property is NOT registered at Land Registry**

11. Check the charges
- a. Upon receipt of the file from the (NIPD) case officer, go through the Works in Default file and make a list of all the charges. A check then needs to be carried out to find out which charges are still outstanding.

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- b. This is done as there are many ways debts can be paid and there is little point in undertaking work where a charge has been repaid.
  - c. Checks should also be made that the statutory notices have been correctly served.
12. Check that the property is not registered
- a. A search of the index map must be undertaken at the Land Registry to ensure that the property is not registered. The search must also include the adjoining properties. This might reveal what incumbrances affect the property and also the extent/limits of the title of the property in question.
  - b. The extent of the property bound by the charge and that can be sold is ascertained by applying the facts to each case, and the particular statutory provisions that have given rise to the Local Land Charge. The position is clear in the case of Charges which arise under the following legislation. Thus, enforced sales should be able to proceed in these cases:
    - i. Public Health Act 1936, Section 291
    - ii. Prevention of Damage by Pests Act 1949
    - iii. Building Act 1984, Section 107
13. Try to ascertain what incumbrances affect the property
- a. Using any information found during this investigation and any information available as to the name(s) of the owner, the purported owner or any other interested party, a Land Charges Act 1972 search must then be carried out against the name of any such person(s) and the property concerned. This may produce clues as to incumbrances affecting the property e.g. easements, covenants and charges.
    - i. Note: where the statutory charge binds all the estates and interests in the property, any registered charges will be of little significance, other than for the purpose of giving notice to any chargee as to the council's intentions. HOWEVER, where this is not the case, then it would probably be inadvisable to proceed unless it is certain that there are no prior charges and that the statutory charge binds the freehold or a long lease.
    - ii. As stated above, if any of the adjoining properties are registered, it may be possible to ascertain what incumbrances affect the same. This may give a purchaser some clues as to the matters affecting the property and make the property more marketable. The alternative is that no such steps are taken and the purchaser is made aware, via the contract terms, that such is the case. In both cases though, the contract for sale will need to contain special conditions covering the position.
14. Write to all interested parties
- a. If the searches provide any information as to the identity or whereabouts of the owner(s) or other interested parties, or such information is already available, a letter is now sent to all persons having an interest in the property in order to advise them of the position see appendixes 6 & 7). This will include others who have a charge registered against the property. The owners copy must be:

- i. Delivered to the Owner or Owners by post, or by hand or should be affixed to the property and
    - ii. Must be posted to any other address(es) shown on the Land Registry.
  - b. The letter must be copied to the Case Officer for information, who must take a photograph of any notices affixed to the property and carry out weekly visits in order to replace any notices that may have been torn down.
- 15. Enquiries are completed
  - a. If either:
    - i. No information is found as to the identity or whereabouts of the owner(s) or other interested parties or
    - ii. There is not reply within 21 days to the letter above

The property is put forward for sale. The contract for sale will need to contain special conditions.

## **Selling the empty property – Valuation/Property Services**

- 16. Methods of selling the empty property
  - a. Once the Director of Neighbourhoods and Investment Programmes has been advised that the charges have been registered against the title and/or that the property can be put forward for sale, the Director considers how the sale is to be effected and instructs the relevant Head of Valuations and Property Services accordingly. Other than where there is particular justification, sale at auction will be the preferred option.
  - b. If choosing sale by private treaty to a preferred purchaser then commission two independent valuations of the property and have the Council's surveyor to vet the valuations to determine the sale price. Sales to a preferred purchaser should require approval to be obtained from the appropriate Cabinet Member.
  - c. Whatever the method of sale a valuation is undertaken by the local authority's surveyor.
- 17. Contract
  - a. For a registered property the contract for sale will be the same as any contract for sale by a mortgagee.
  - b. In the case of an unregistered property there will probably be no deeds or details of any incumbrances affecting the property and the contract for sale need to reflect this.
    - i. In such cases the form of the resolution prepared in respect or registered land is incorporated into the contract as a recital (see eg in appendix 13 for form of suggested special conditions of sale).
    - ii. On completion of the sale the Land Registry require the Council to provide a letter containing a certification by the Council that it has all the necessary rights and powers to dispose of the property and that it has taken all appropriate steps in accordance with the relevant statute (appendix 14).

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- iii. It will be necessary to make the purchaser's solicitor aware that the letter must be submitted with their client's application for first registration.
- iv. As far as the incumbrances are concerned, the Land Registry will probably make a 'protective entry' on the register to the effect that the property is subject to such incumbrances as affect the same at the date of the registration, no details having been provided on first registration.

## 18. Title

- a. Where the title deeds have not been recovered the following should be borne in mind:
  - i. Registered titles: copies can be obtained of the documents referred to on the title from the Land Registry. Where they are not available, include an appropriate clause in the contract to cover the position.
  - ii. Unregistered titles: There will probably be no deeds or details of the incumbrances affecting the property.

## 19. Check charges

- a. Immediately prior to auction/exchange of contracts a further check is made to ascertain whether the charges have been repaid.

## 20. Post sale

- a. The post sale procedure is to be generally the same as that for a normal sale.
- b. The following deductions will be made from the proceeds of the sale:
  - i. Any auctioneer's fee
  - ii. The legal fee
  - iii. The surveyor's fee
  - iv. NIP Departments administration fee
  - v. The outstanding chargesThese sums will be processed in the same manner as for a normal sale.
- c. If the debts are greater than the proceeds of sale, consider whether the fees are to have first call on the proceeds or not. The auctioneer's fees will have to be paid in any event and the other fees should also have first call on the proceeds. Any remaining debt is taken of the property and placed against the former owner as a personal debt, to be pursued in the normal manner if economically viable.
- d. If any balance remains from the proceeds of the sale and the whereabouts of the owner/the person first entitled is known, then the balance is paid in the normal way.
- e. If, as is most likely, the owner's whereabouts are not known, then the balance must be paid into an interest bearing account. If no claim is then made within a period of 12 years, the money reverts to the Council.



## Neighbourhoods and Investment Programmes Department

Magdalen House  
30 Trinity Road  
Bootle  
Merseyside L20 3NJ

Date:  
Our Ref:  
Your Ref:

**Please contact:**  
**Contact Number:** 0151 934 4712  
**Fax No:** 0151 394 4276  
e-mail:

Dear,

**Property Address:**  
**Subject:**

I am writing to as our records show/suggest that you have an interest in the above vacant property.

On the dates shown below notices were served upon you requiring you to undertake work in order to remedy unsatisfactory circumstances. Because you did not comply with the Notice, the Council arranged for the work to be carried out in default once it had expired. The cost of the work totals £--- excluding interest. This is now a debt which you owe the City Council and one which comprises a local land charge attached to the property.

Date of Notice	Legislation	Date of Work	Amount

Please note that, should you fail to settle these outstanding debts, or contact the Council within 28 days to discuss this matter, the Council may serve on you a Notice under Section 103 (1) of the Law of Property Act 1925 which would advise you of its intention to sell the above property or some part of such property.

Please also note that the Council will exercise its right to charge interest at a rate of not more than 2% above the current Bank of England base rate, on any sums that are owed to it. For any works where a Section 81a Notice applies, interest will run from the date of service of such Notice; in all other cases, interest will run from the date of service of the aforementioned Section 103 (1) Notice should it be necessary to serve such Notice.

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**Minicom: 0151 934  
4657**



Please be advised that you should contact the Officer named at the top of this letter, as my Finance Department will not take payment without my authorisation from that named officer.

This letter has been sent to all those who have, or appear to have, an interest in the above property.

Yours faithfully,

**METROPOLITAN BOROUGH OF SEFTON****ENVIRONMENTAL PROTECTION ACT 1990, SECTION 81A**

To: «nadname»  
 «nadaddr2»  
 «nadaddr3»  
 «nadaddr5»

**On (date) the Council served on you a Notice under Section 80 of the Environmental Protection Act 1990 ('the Act') requiring the execution of certain works and the taking of such other steps in relation to the above property to abate the nuisance or prohibit or restrict its occurrence or recurrence arising from the defective state of such property.**

**You failed to comply with such Notice and the Council, in default, carried out such works and took such steps as aforesaid at a total cost to the Council of (£ ). This is the sum recoverable by the Council pursuant to Section 81(4) of the Act in respect of the above Notice and this Notice is given pursuant to Section 81A of the Act.**

I am required by Subsection 81A(2) of the Act to advise you that, pursuant to Subsection 81A(1) thereof, where any expenses are recoverable under Section 81(4) of the Act from a person who is the owner of the premises there mentioned and the local authority serves a Notice on him under Section 81A of the Act (pursuant to which this Notice is given):

- (a) the expenses shall carry interest, at such reasonable rate as the local authority may determine, from the date of service of the Notice until the whole amount is paid, and
- (b) subject to the provision of Section 81A of the Act, the expenses and accrued interest shall be a charge on the premises.

The rate of interest payable is determined by the Council as referred to in (a) above and varies from time to time.

I am further required to advise you of the provisions of Subsections 81A(4) to (6) of the Act which are as follows:

- (4) Subject to any Order under Subsection (7)(b) or (c) below, the amount of any expenses specified in a Notice under this Section and the accrued interest shall be a charge on the premises:
  - (a) as from the end of the period of 21 days beginning with the date of service of the Notice, or
  - (b) where an appeal is brought under Subsection (6) below, as from the final determination of the appeal, until the expenses and interest are recovered.
- (5) for the purposes of Subsection (4) above, the withdrawal of an appeal has the same effect as a final determination of the appeal.
- (6) a person served with a Notice of copy of a Notice under this Section may appeal against the Notice to the County Court within a period of 21 days beginning with the date of service.

If you are in any doubt as to the effect of this Notice, you should take legal advice.

Dated \_\_\_\_\_ Signed \_\_\_\_\_

Environmental Health Officer

Environmental Protection Department

«offadd1»  
 «offadd2»  
 «offadd3»  
 «offadd5»

## SEFTON METROPOLITAN BOROUGH COUNCIL

**NOTICE UNDER SECTION 103 (1) OF THE LAW OF PROPERTY ACT 1925/ LETTER  
BEFORE ACTION (WHERE ENVIRONMENTAL PROTECTION ACT APPLIES)  
RELATING TO:**

On the \_\_\_\_\_, the Council served on you Notice under Section 80 of the Environmental Protection Act 1990 ("the Act") requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

This is now a debt that is due to Sefton Metropolitan Borough Council as well as a Local Land Charge attaching to the above property. Also, interest is now accruing on such amount at the current statutory rate.

On the date the Council gave you Notice under Section 81A of the Act and the period of 21 days referred to in Subsections 81A (4) (a) and (6) having elapsed and no appeal against that Notice having been made pursuant to the said Subsection 81A (6) then by virtue of the provisions of Subsection 81A (4) of the Act:

1. The expenses incurred by the Council as referred to above and the accrued interest have become a charge on the above property and
2. The Council has for the purpose of enforcing the said charge by virtue of Subsection 81A (8) of the Act all the same powers and remedies under the Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

The Council now requires you to pay to it immediately the above amount with the interest owing in respect of it on the date of payment. If you do not pay the amounts due, the Council, without further Notice, can:

- (1) If the debt is not paid within 28 days from the service of this Notice commence proceedings in the County Court for the recovery of the debt or
- (2) If the debt is not paid within three months from the date of service of this Notice sell the above property or some part of such property.

Please note that the Council is legally obliged to give you Notice pursuant to Section 103 (1) of the Law of Property Act 1925 if it chooses the option in point (2) above and this letter constitutes such a Notice.

I would remind you that once again you are required to settle the amounts due to the Local Authority and it is important that you contact me within 28 days to advise me how you intend to proceed.

Please note that you must only attempt to settle this matter after contacting me, as my Finance Department will not take payment without my authorisation and you may incur extra charges through the delay.

If you are in doubt as to the effect of this Notice you should take legal advice.

## SEFTON METROPOLITAN BOROUGH COUNCIL

### **NOTICE UNDER SECTION 103 (1) OF THE LAW OF PROPERTY ACT 1925/ LETTER BEFORE ACTION (WHERE ENVIRONMENTAL PROTECTION ACT DOES NOT APPLY) RELATING TO:**

On the \_\_\_\_\_, the Council served on you Notice under the provision of [ ] requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

On the \_\_\_\_\_, the Council served on you Notice under the provision of [ ] as above requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

On the \_\_\_\_\_, the Council served on you Notice under the provision of [ ] as above requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

On the \_\_\_\_\_, the Council served on you Notice under the provision of [ ] as above requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

On the \_\_\_\_\_, the Council served on you Notice under the provision of [ ] as above requiring you to carry out certain works to the above property. You failed to comply with such Notice and the Council, in default, carried out such works at a total cost to the Council of £ \_\_\_\_\_.

These are now debts that are due to Sefton Metropolitan Borough Council as well as Local Land Charges attaching to the above property. Also, interest is now accruing on such amount at the current statutory rate.

By virtue of the above statute(s), the debts due to the Council have, from the date of completion of the said works, taken effect, until recovered, as charges on the above property and the Council has all the same powers and remedies under the Law of Property Act 1925 and otherwise, as if it was a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

The Council now requires you to pay to it immediately the above amount with the interest owing in respect of it on the date of payment. If you do not pay the amounts due, the Council, without further Notice, can:

- (3) If the debt is not paid within 28 days from the service of this Notice commence proceedings in the County Court for the recovery of the debt or
- (4) If the debt is not paid within three months from the date of service of this Notice sell the above property or some part of such property.

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Please note that the Council is legally obliged to give you Notice pursuant to Section 103 (1) of the Law of Property Act 1925 if it chooses the option in point (2) above and this letter constitutes such a Notice.

I would remind you that once again you are required to settle the amounts due to the Local Authority and it is important that you contact me within 28 days to advise me how you intend to proceed.

Please note that you must only attempt to settle this matter after contacting me, as my Finance Department will not take payment without my authorisation and you may incur extra charges through the delay.

If you are in doubt as to the effect of this Notice you should take legal advice.

**BUILDING ACT 1984**

**Property Address:**

**Sefton Metropolitan Borough**

1. **WHEREAS** Sefton Metropolitan Borough Council ('the Council') is a 'local authority' within the meaning of S.126 of the Building Act 1984 ('the Act').
2. **AND WHEREAS** a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by S.80 of the Environmental Protection Act 1980 may, under S.76 of the Act, serve notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.
3. **AND WHEREAS** a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.
4. **AND WHEREAS** the expense of such works may, by virtue of Subsection (12) of S.76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of S.107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates and interests in them and gives a local authority, for the purposes of enforcing such a charge, all the powers and remedies under the law of Property Act 1925 and otherwise as if they were mortgagees by deed.
5. **AND WHEREAS** such charge is, by virtue of S.1(1)(a) of the Local Land Charges Act 1975, registerable as a local land charge.
6. **AND WHEREAS** under S.7 of the Local Land Charges Act 1975 a local land charge falling within the aforementioned S.1(1)(a) takes effect as if it had been created by deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.
7. **AND WHEREAS S.101** of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.
8. **AND WHEREAS** pursuant to a notice dated [ ] the Council gave notice to the owner or owners of the property known as [ ] ('the Premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 addressing the notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 addressing the notice to [ ] and leaving it or sending it in a prepaid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 addressing the n  
 Limited] at [

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 secretary of Clerk of [ ]  
 registered or principal office of [ ]

# Agenda Item 14

Limited] and delivering it or sending it in a prepaid letter to that address and/or

ALTERNATIVE 4 (it not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

ALTERNATIVE 5 (the premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the premises) and affixing the notice or a copy of it to some conspicuous part of the premises stating that the Council intended to remedy the defective state of the Premises after the expiration of [ ] days from the date of service of the notice by carrying out the following works:[ ]

**9. AND WHEREAS** there being no counter-notice served upon the Council within the period prescribed by S.76 (3) of the Act, the Council executed the said works between the [date] and the [date] at a cost of the Council of £

**10. AND WHEREAS** on the [date] the Council registered the cost of the works in Part II of the Sefton Borough Local Land Charges Register as a specific financial charge against the Premises such charge attracting interest at such a rate from time to time applying.

**11. AND WHEREAS** pursuant to a notice dated [ ] the Council gave notice to the owner or owners of the property known as [ ] ('the premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 Addressing the notice to [ ] and delivering it to that person and/or

ALTERNATIVE 2 addressing the notice to [ ] and leaving it or sending it in a prepaid letter addressed to that person at [ ] being the usual or last known residence of that person and/or

ALTERNATIVE 3 addressing the notice to the Secretary of Clerk of [ Limited] at [ ] being the registered or principal office of [ Limited] and delivering it or sending it in a prepaid letter to that address and/or

ALTERNATIVE 4 (it not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the premises.



ALTERNATIVE 5 (the premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that the Council intended to remedy the defective state of the Premises after the expiration of [9] days from the date of service of the notice by carrying out the following works:

**12. AND WHEREAS** there being no counter-notice served upon the Council within the period prescribed by S.76(3) of the Act, the Council executed the said works between the [date] and the [date] at a cost to the Council of [£ ].

**13. AND WHEREAS** on the [date] the Council registered the cost of the works in Part II of Sefton Borough Local Land Charges Register as a specific financial charge against the Premises such charge attracting interest at such a rate from time to time applying.

**14. AND WHEREAS** the said monies continue to remain outstanding.

**THE COUNCIL SEFTON METROPOLITAN BOROUGH COUNCIL** being now desirous of exercising their aforementioned power of sale over the premises to recover the costs they have incurred in relation thereto,

**1. HEREBY RESOLVES**

- 1 (i) to make application to the District Land Registry for Lancashire and Merseyside under the Land Registration Act 1925 to register their charge against all titles subsisting in the Premises.
- 1 (ii) to claim affirm and avow in said application the binding nature of the Council's charge on all estates and interests in the Premises and the priority of the Council's charge over all existing and future charges affecting each and every title in the Premises (whether or not they be registered) such claims affirmations and avowals being supported by the decisions in Bristol Corporation –v- Virgin [1928] 2.K.B.622 and Paddington Borough Council –v- Finucane [1928] Ch567.
- 1. (iii) to affix the Council seal hereto.

**2. HEREBY CERTIFIES to HM Land Registry**

- 2 (i) as recited in paragraph 4 of this resolution the Act contains provisions conferring a charge on the Premises and on all estates and interests therein.
- 2 (ii) as further recited in paragraph 4 of this resolution the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if it is a mortgage by deed.
- 2 (iii) the Council has followed the procedure in the Act as to service of notices and the carrying out of the works.
- 2 (iv) the charge(s) for which an application for registration is made pursuant to 1 (i) above affects (s) the whole of the property known as { } and registered under title number(s) [ ]
- 2 (v) as recited in paragraph(s) 10 and 13 of this resolution the charge (s) for which an application for registration is made to 1 (i) hereof was/were registered in

# Agenda Item 14

Part 2 of the City of Manchester Register of Local Land Charges on the [ ] and the [ ]

DATED this day of 20

THE COMMON SEAL OF SEFTON METROPOLITAN BOROUGH COUNCIL was hereunto affixed in pursuance of an Order of the Council of the said borough

**Neighbourhoods and  
Investment Programmes  
Department**

Magdalen House  
30 Trinity Road  
Bootle  
Merseyside L20 3NJ

Date:  
Our Ref:  
Your Ref:

**Please contact:**  
**Contact Number:** 0151 934 4712  
**Fax No:** 0151 394 4276  
**e-mail:**

Dear,

**Re:**  
**Address:**

The Council has, pursuant to its statutory powers, carried out certain works to the above premises, the cost of which have been registered in Part 2 of the Register of Local Land Charges as financial charges. Notice(s) detailing the works and the costs have been served, together with Notices(s) of demand for payment of the amount(s) due to the Council in order to satisfy the requirements of Section 103(1) of the Law of Property Act 1925.

The Statutes pursuant to which the Council has carried out such works confer, in favour of the Council, a charge on the premises and all estates and interests therein and the Council has, for the purposes of enforcing the charge all the same powers and remedies under the Law of Property Act 1925, and otherwise as if it were a mortgagee by deed having powers of sale, of lease, of accepting surrenders of leases and of appointing a receiver.

The Council proposes, pursuant to its statutory powers, to register the said financial charges against the title to the above premises. Once the charge(s) have been registered, the Council may then sell the premises and apply the proceeds of sale towards the discharge of the debt. If, however, the debt is greater than the proceeds of sale received on any sale, the Council has the right to pursue you for any balance owing, if necessary by legal action.

I should therefore be grateful if you would make arrangements through me for the discharge of the outstanding debt or, if you are not prepared to do this, then please forward to me all the title deeds in your possession relating to the above property. If they are not in your possession, please let me know and advise me of the whereabouts of the deeds.



Minicom: 0151 934 4657



# Agenda Item 14

**Please note, if I hear nothing from you within 21 days from the date hereof, I will proceed to register the Council's charges against your title to the above premises.**

**If you wish to discuss this matter, please do not hesitate to contact me on the above details.**

**Yours faithfully,**

# Agenda Item 14

## Neighbourhoods and Investment Programmes Department

Magdalen House  
30 Trinity Road  
Bootle  
Merseyside L20 3NJ

Date:  
Our Ref:  
Your Ref:

**Please contact:**  
**Contact Number:** 0151 934 4712  
**Fax No:** 0151 394 4276  
e-mail:

Dear,

**Address:**  
**Your Charge Dated:**

I am aware from the contents of the registers of title number [ ], which relates to the above property, that you have a charge registered against the same. That charge is dated [ ] and the owner of the property is shown to be [ ].

The Council has, pursuant to its statutory powers, carried out certain works to the above property, the costs of which have been registered in Part 2 of the Register of Local Land Charges as financial charges.

The Statutes pursuant to which the Council has carried out such works confer, in favour of the Council, a charge on the premises and all estates and interests therein and the Council has, for the purposes of enforcing the charge all the same powers and remedies under the Law of Property Act 1925, and otherwise as if it were a mortgagee by deed having powers of sale, of lease, of accepting surrenders of leases and of appointing a receiver. The said statutes confer a priority on the Council's charge over your own charge and. Therefore, when registered, the Council will be the first chargee.

The Council proposes, pursuant to its statutory powers, to register the financial charges against the title to the above premises. Thereafter the Council may exercise its power of sale over the property and apply the proceeds of sale towards the discharge of the debt due to the Council.

If you wish to repay the outstanding debt due to the Council, I will provide details of the outstanding amounts. Otherwise, I should be grateful if you would forward to me all the title deeds and documents in your possession relating to the property.

If you do not have the deeds and documents in you possession, please let me know. I should be grateful if you were then able to let me know their whereabouts.



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**If you wish to discuss this matter, please do not hesitate to contact me on the above details.**

**Yours faithfully,**

## Example of resolution – Section 76, Building Act 1984

**PROPERTY:**

**BUILDING ACT 1984**

SEFTON METROPOLITAN BOROUGH COUNCIL

1. Whereas Sefton Metropolitan Borough Council ('the Council') is a 'local authority' within the meaning of Section 126 of the Building Act 1984 ('the Act').
2. And whereas a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by Section 80 of the Environmental Protection Act 1990 may, under Section 76 of the Act, serve Notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.
3. And whereas a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.
4. And whereas the expense of such works may, by virtue of Subsection (2) of Section 76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of Section 107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates and interests in them and gives a local authority for the purposes of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.
5. And whereas such charge is by virtue of Section 1(1)(a) of the Local Land Charges Act 1975, registerable as a Local Land Charge.
6. And whereas, under Section 7 of the Local Land Charges Act 1975, a local land charge falling within the aforementioned Section 1(1)(a) takes effect as if it had been created by deed of charge, by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.
7. And whereas Section 101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.
8. And whereas pursuant to a notice dated [ ] the Council gave Notice to the owner or owners of the property known as [ ] ('the premises') under Section 76 of the Act by serving the Notice in accordance with Section 94 of the Act by -

ALTERNATIVE 1 addressing the Notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 addressing the Notice to [ ] and leaving it or sending it in a pre-paid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

# Agenda Item 14

ALTERNATIVE 3 addressing the Notice to the Secretary or Clerk of [ ] Limited] at [ ], being the registered or principal office of [ ] Limited] and delivering it or sending it in a pre-paid letter to that address **and/or**

ALTERNATIVE 4 (it not being practicable, after reasonable inquiry having been made, to ascertain the name and address of the person to or on whom the Notice should be given or served) addressing the Notice to the owner or owners of the premises (naming the premises) and either delivering it to some person on the premises or (there being no person on the premises to whom it can be delivered) affixing the Notice or a copy of it to some conspicuous part of the premises.

ALTERNATIVE 5 (the premises at the date such Notice is given or served being unoccupied) addressing the Notice to the owner or owners of the premises (naming the premises) and affixing the Notice or a copy of it to some conspicuous part of the premises stating that the Council intended to remedy the defective state of the premises after the expiration of [ ] days from the date of service of the Notice by carrying out the following works: [ ].

9. And whereas there being no counter-notice served upon the Council within the period prescribed by Section 76(3) of the Act, the Council executed the said works between the [date] and the [date] at a cost to the Council of £[ ].
10. And whereas on the [date] the Council registered the cost of the works in Part 11 of Sefton Council's Local Land Charges Register as a specific financial charge against the premises, such charge attracting interest at such a rate from time to time applying.
11. And whereas pursuant to a Notice dated [ ] the Council gave Notice to the owner or owners of the property known as [ ] ('the premises') under Section 76 of the Act by serving the Notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 Addressing the Notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 Addressing the Notice to [ ] and leaving it or sending it in a pre-paid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 addressing the Notice to the Secretary or Clerk of [ ] Limited] at [ ], being the registered or principal office of [ ] Limited] and delivering it or sending it in a pre-paid letter to that address **and/or**

ALTERNATIVE 4 (it not being practicable, after reasonable inquiry having been made, to ascertain the name and address of the person to or on whom the Notice should be given or served) addressing the Notice to the owner or owners of the premises (naming the premises) and either delivering it to some person on the premises or (there being no person on the premises to whom it can be delivered) affixing the Notice or a copy of it to some conspicuous part of the premises.

ALTERNATIVE 5 (the premises at the date such Notice is given or served being unoccupied) addressing the Notice to the owner or owners of the premises (naming the premises) and affixing the Notice or a copy of it to some conspicuous part of the



premises stating that the Council intended to remedy the defective state of the premises after the expiration of [ ] days from the date of service of the Notice by carrying out the following works: [ ].

12. And whereas there being no counter-notice served upon the Council within the period prescribed by Section 76(3) of the Act, the Council executed the said works between the [date] and the [date] at a cost to the Council of £.
13. And whereas on the [date] the Council registered the cost of the works in Part 11 of Sefton Council's Local Land Charges Register as a specific financial charge against the premises, such charge attracting interest at such a rate from time to time applying.
14. And whereas the said monies continue to remain outstanding.

**METROPOLITAN BOROUGH OF SEFTON** being now desirous of exercising their aforementioned power of sale over the premises to recover the costs they have incurred in relation thereto,

## **HEREBY RESOLVES**

- 1(i) To make application to the District Land Registry for Lancashire and Greater Manchester under the Land Registration Act 1925 to register their charge against all titles subsisting in the premises
- 1(ii) To claim, affirm and avow in said application the binding nature of the Council's charge on all estates and interests in the premises and the priority of the Council's charge over all existing and future charges affecting each and every title in the premises (whether or not they be registered), such claims, affirmations and avowels being supported by the decisions in Bristol Corporation-v-Virgin [1928] 2.K.B.622 and Paddington Borough Council-v-Finucane [1928] Ch567.
- 1(iii) To affix the Council seal hereto.

## **HEREBY CERTIFIES TO HM LAND REGISTRY**

- 2(i) As recited in paragraph 4 of this resolution, the Act contains provisions conferring a charge on the premises and on all estates and interests therein.
- 2(ii) As further recited in paragraph 4 of this resolution, the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if it is a mortgage by deed.
- 2(iii) The Council has followed the procedure in the Act as to service of Notices and the carrying out of the works.
- 2(iv) The charge(s) for which an application for registration is made pursuant to 1(i) above affect(s) the whole of the property known as [ ] and registered under title number(s) [ ].

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2(v) As recited in paragraphs 10 and 13 of this resolution, the charge(s) for which an application for registration is made pursuant to 1(i) hereof was/were registered in Part 2 of the Sefton Council Register of Local Land Charges on the [ ] and the [ ]

Dated :

The COMMON SEAL of the  
Metropolitan Borough of Sefton  
was hereunto affixed in  
pursuance of an Order of  
the Council of the said Borough

**Authorised Signatory:**



\*\*\*\*\*OBTAIN FROM LAND REGISTRY\*\*\*\*\*  
**Sample Application for Registration  
 (Form SC)**  
 \*\*\*\*\*OBTAIN FROM LAND REGISTRY\*\*\*\*\*

Application for noting the  
**overriding priority of a  
 statutory charge**

Land Registry

# SC

*If this application is accompanied by either Form AP1 or FR!, you need not complete panels 6, 7 or 8.  
 If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form*

<b>1. Administrative area and postcode if known</b>			
<b>2. Title number(s)</b>			
3. If you already made this application by <b>outline application</b> , insert reference number:			
<b>4. Property</b>			
<b>5. Application and fee</b> <i>A fee calculator for all types of applications can be found on Land Registry's website at <a href="http://www.landregistry.gov.uk/fees">www.landregistry.gov.uk/fees</a></i>  <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;"><b>Noting of priority of statutory charge</b></td> <td style="width: 40%; text-align: right;">Fee paid £</td> </tr> </table> <b>Fee payment method:</b> <i>Place 'X' in the appropriate box.</i> I wish to pay the appropriate fee payable under the current Land Registration Fee Order:  <input type="checkbox"/> By cheque or postal order, amount £                      made payable to 'Land Registry' <input type="checkbox"/> By Direct Debit under an authorised agreement with Land Registry	<b>Noting of priority of statutory charge</b>	Fee paid £	FOR OFFICIAL USE ONLY  Record of fee Paid  Particulars of under/over payment  Fees debited £  Reference number
<b>Noting of priority of statutory charge</b>	Fee paid £		
<b>6. Documents lodged with this form</b> <i>Number the documents in sequence: copies should also be numbered and listed as separate documents; alternatively you may prefer to use Form DL. If you supply the original documentation and a certified copy, we will assume that you request the return of the original, if a certified copy is not supplied, we may return the original document and it may be destroyed.</i>			
<b>7. The applicant is:</b> <i>Please provide the full name of the person applying for the noting of the overriding priority</i>  <b>The application has been lodged by:</b> Land Registry Key No. (if appropriate) Name (if different from the applicant) Address/DX No.  Reference E-mail	FOR OFFICIAL USE ONLY Codes Dealing  Status		
Telephone no.	Fax no.		

Sample Application for Registration (Form SC) continued

**8. Where the registry is to deal with someone else** *We shall deal only with the applicant, or the person lodging the application if different unless you place 'X' against one or more of the statements below and give the necessary details.*

Send title information document to the person shown below

Raise any requisitions or queries with the person shown below

Return original documents lodged with this form (see note in panel 6) to the person shown below  
*If this applies only to certain documents, please specify*

Name  
Address/DX No.

Reference  
E-mail

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

---

**9.** *Place 'X' in the appropriate box and complete as necessary*

I certify that the statutory charge is already registered as entry number \_\_\_\_\_ in the charges register

I certify that the statutory charge has arisen and this is evidenced by:

A resolution dated [ \_\_\_\_\_ ] made by the Applicant enclosed with the accompanying application for registration of the charge

---

**10. The applicant applies for an entry to be made on the register to show that the statutory charge referred to in panel 9 above has priority over the charge(s) shown in panel 11 below. The statutory charge has priority by virtue of:** *Please state the provision, etc.*

The statements contained in a resolution dated [ \_\_\_\_\_ ] made by the Applicant enclosed with the accompanying application for registration of the charge

---

**11. Please identify the charge(s) over which priority is claimed:** *If there are two or more charges of the same date to the same lender, you must clearly identify which charge(s) priority is claimed over by including a number or other identifier for the charge in the first column*

<u>Date of Charge</u>	<u>Lender</u>

---

**12. Signature of applicant or their conveyancer** \_\_\_\_\_ **Date** \_\_\_\_\_

# Agenda Item 14

Appendix 11

## Letter to Land Registry in respect of unregistered property

Your ref:

Our ref:

Date:

The Chief Land Registrar,  
Merseyside District Land Registry,  
Birkenhead

Dear Sir,

**Property:**

I refer to the above property, which has today been transferred by the Council under the Enforced Sales Procedure.

In accordance with the procedure agreed with you I, on behalf of the Council and being duly authorised to DO so, hereby certify that:

1. as recited in clause [ ] of the Contract for Sale dated [ ] the Act (as referred to therein) contains provision conferring a charge on the Premises and on all estates and interests therein.
2. as further recited in clause [ ] of the said Contract for Sale the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagee by deed.
3. the Council has followed the procedure in the Act as to service of notices and the carrying out of the works.
4. the charge(s) pursuant to which the Council has disposed of the property affect(s) the whole of the property known as [ ] today disposed of by the Council.
5. as recited in clause [ ] of the Contract for Sale the charge(s) pursuant to which the Council has disposed of the property was/were registered in part 2 of the Register of Local Land Charges on the [ ].

Yours faithfully

Borough Solicitor.

## Neighbourhoods and Investment Programmes Department

Magdalen House  
30 Trinity Road  
Bootle  
Merseyside L20 3NJ

Date:  
Our Ref:  
Your Ref:

**Please contact:**  
**Contact Number:** 0151 934 4712  
**Fax No:** 0151 394 4276  
e-mail:

Dear,

**Re:**  
**Address:**

I refer to the above and my letter dated , requesting the Title Deeds and advising you of the Council's statutory powers in relation to the charges outstanding in respect of the above property.

In that letter, I advised you that the Council has the power to sell the above property, for the purpose of enforcing the charge and to deduct from the proceeds of sale the debts due to the Council.

The Council's charge has now been registered at HM Land Registry and it is now the Council's intention to market the property with a view to a sale thereof.

Yours faithfully,



Minicom: 0151 934 4657



INVESTOR IN PEOPLE

## Suggested Special Conditions

### Building Act 1984 (Section 76) Charge – Unregistered Property

#### Suggested Special Conditions

##### 1. The Property

All that Property situate at and known as [ ] in the Metropolitan Borough of Sefton shown for identification purposes only edged on the attached plan.

##### 2. Recitals

**2.1 WHEREAS** the Vendor is a 'local authority' within the meaning of S.126 of the Building Act 1984 ('the Act') and the steps taken by the Vendor as referred to in these recitals were taken in their capacity as a local authority within the meaning of the Act

**2.2 AND WHEREAS** a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by S.80 of the Environmental Protection Act 1980, may under S.76 of the Act, serve notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.

**2.3 AND WHEREAS** a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.

**2.4 AND WHEREAS** the expense of such works may, by virtue of Subsection (2) of S.76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of S.107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates in them and gives a local authority, for the purpose of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.

**2.5 AND WHEREAS** such charge is, by virtue of S.1(1) (a) of the Local Land Charges Act 1975, registerable as a local land charge.

**2.6 AND WHEREAS** under S.7 of the Local Land Charges Act 1975 a local land charge falling within the aforementioned S.1 (1) (a) takes effect as if it had been created by deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.

**2.7 AND WHEREAS** S.101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.



**2.8 AND WHEREAS** pursuant to a notice dated [ ] the Vendor gave notice to the owner or owners of the Property (in these recitals described as ‘the Premises’) under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 Addressing the notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 Addressing the notice to [ ] and leaving it or sending it in a prepaid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 Addressing the notice to the Secretary or Clerk of [ Limited] at [ ] being the registered or principal office of [ Limited] and delivering it or sending it in a prepaid letter to that address **and/or**

ALTERNATIVE 4 (It not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

ALTERNATIVE 5 (the Premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that the Vendor intended to remedy the defective state of the Premises after the expiration of [9] days from the date of service of the notice by carrying out the following works:

**2.9 AND WHEREAS** there being no counter-notice served upon the Vendor within the period prescribed by S.76(3) of the Act, the Vendor executed the said works between the [ ] and the [ ] at a cost to the Vendor of [£ ].

**2.10 AND WHEREAS** on the [date] the Vendor registered the cost of the works in Part 11 of the Salford City Council Local Land Charges Register as a specific financial charge against the Premises, such charge attracting interest at such a rate from time to time applying.

**2.11 AND WHEREAS** the expenses incurred by the Vendor as referred to in Recital 2.9 have become a charge on the premises by virtue of Section 107 of the Act as more particularly referred to in Recital 2.4 and the said expenses continue to remain outstanding.

3 Title

**3.1** The title to the property is unregistered and the Vendor does not have in its possession any of the title deeds or documents relating to the Property and the Purchaser shall raise no requisition thereon or objections thereto and shall not be entitled to postpone or delay completion as a result thereof.

# Agenda Item 14

- 3.2** The Vendor cannot produce an up-to-date receipt in respect of any yearly rent (if any) payable on the Property nor any other evidence that any such rent has been paid to date (and in which respect the Vendor shall not be liable for any arrears of such rent up to the date of Actual Completion and which liability the Purchaser will assume on Actual Completion) and the Purchaser shall raise no requisition nor be entitled to delay or postpone completion as a result thereof.
- 3.3** The Purchaser purchases with full knowledge of the fact that on first registration of the title to the Property at HM Land Registry the Chief Land Registrar will make an entry against such title on the following (or similar terms) and the Purchaser shall make no claim or demand against the Vendor in regard thereto:

“The Property is subject to such restrictive covenants and to such rent charges as may have been imposed thereon before [*this will be the date of application for first registration*] and are still subsisting and capable of taking effect”.

## **4 Possession**

Vacant possession of the Property will be given to the Purchaser on Actual Completion.

## **5 Covenants for Title**

- 5.1** The Vendor is selling all of the estates and interests in the Property as are bound by the Charge(s) arising under Section 107 of the Building Act 1984 as referred to Recital 2.11 of these Special Conditions but freed and discharged from the said Charge(s).
- 5.2** Sections 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this Agreement and the Transfer of the Property to the Purchaser (‘the Transfer’) and the Transfer shall contain the following provisions:
- 5.2.1 In consideration of £[**naming the amount of the consideration**] (receipt of which is acknowledged) the Vendor transfers the Property to the Purchaser
- 5.2.2 The parties agree and declare that the covenants by the Vendor implied by Sections 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this transfer.

## **6 Matters affecting the Property**

The property is sold subject to and (as the case may be) with the benefit of:

- 6.1** all rents rights exceptions and reservations and covenants and conditions provisions and agreements and declarations or otherwise as subsist and relate to the Property without any obligation or liability on the part of the Vendor (whether as a result of its inability to produce the title deeds or documents to the property or otherwise) to define or provide details of the same.
- 6.2** all Local Land Charges whether registered or not before or after the date hereof and all matters capable of being registered as such
- 6.3** all notices served and orders demands proposals or requirements made by any local or public authority whether before or after the date hereof

- 6.4** all actual or proposed orders directions notices charges restrictions conditions agreements or other matters arising under the town and country planning legislation and environmental law.
- 6.5** all covenants exceptions and reservations of whatever nature all rights of way water light air and other rights easements quasi easements liabilities and public or private rights whatever and to any liability to repair or contribute to the repair of sewers drains fences or other like matters as the Purchaser shall have notice of or shall be apparent on inspection of the Property.

## **7 Indemnity covenant by the Purchaser**

The transfer will contain a covenant by the Purchaser with the Vendor that the Purchaser and its successors in title will henceforth observe and perform all such matters subject to which the property is expressed to be sold in Clause 6.1 of these Special Conditions the breach of which would or could expose the Vendor to liability (either direct or indirect) and will contain an indemnity by the Purchaser in favour of the Vendor against all actions proceedings costs claims and demands which may be made against the Vendor in connection with the breach non-performance or non-observance of the same.

## **8 Subsals**

The Vendor will not be required to execute a Transfer of the property to any person other than the Purchaser and in one parcel and by one transfer.

## **9 General Conditions**

- 9.1** 'The General Conditions' means the Standard Conditions of Sale (Fourth Edition)
- 9.2** The General Conditions are deemed to be incorporated herein so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with these Special Conditions and the 'contract rate' will be four per cent (4%) per annum above the Base Rate for the time being of the Co-operative Bank plc.
- 9.3** The General Conditions are amended as follows:
- 9.3.1** Standard Conditions 2.2.5 and 2.2.6 shall not apply and the Deposit shall be paid to the Vendor's Solicitor as agent for the Vendor.
  - 9.3.2** In Standard Condition 3.1.2 subclause (c) the words "and could not reasonably" shall be deleted
  - 9.3.3** Standard Condition 3.4 shall not apply
  - 9.3.4** Standard Condition 4.6.2 shall not apply
  - 9.3.5** Standard Condition 5.1.1 shall not apply and the buyer assumes the risk when the contract is made
  - 9.3.6** Standard Condition 5.1.2 shall not apply and the buyer must buy the Property in whatever physical state it is in at completion.
  - 9.3.7** Standard Conditions 5.2.2 (b), 5.2.2 (e) and 5.2.2 (g) shall not apply
  - 9.3.8** Standard Condition 5.2.3 shall not apply
  - 9.3.9** Standard Condition 5.2.7 shall not apply

# Agenda Item 14

9.3.10 In Standard Condition 5.2.2 (f) the words “nor change its use and is to comply with all statutory obligations relating to the property and indemnify the seller against all liability arising as a result of any breach of such obligation” shall be added at the end

9.3.11 In Standard Condition 7.1.1 the words “or in negotiation leading to it” and “or was” shall be deleted

9.3.12 Standard Condition 7.3.2 shall be deleted and the following substituted:  
Compensation is calculated at the contract rate on all sums payable under the contract (other than pursuant to Standard Condition 6.3) for the period between the completion date and actual completion.

## 10 Non-merger

The contract will not merge in the Transfer on completion but will continue in full force and effect in relation to any matters outstanding at completion.

## 11 Condition of the Property

The Purchaser is deemed to have made a full and complete inspection of the Property and to have full knowledge and notice of the state of repair and condition thereof in all respects and the Purchaser shall make no claim or demand whatsoever against the Vendor in respect of any matter or thing arising out of or in connection with the state of repair and condition of the Property or any part thereof.

## 12 Transfer to take effect subject to General and Special Conditions

The transfer is to take effect as if the disposition is expressly made subject to all matters to which the Property is sold subject under the General Conditions and Special Conditions of sale.

## 13 Completion Date

The sale will be completed at the office of the Vendor’s Solicitor before 2.30pm on [ ]

## 14 Restriction on Assignment

This Agreement is personal to the Purchaser and shall not be capable of assignment.

## Environmental Protection Department

Magdalen House  
30 Trinity Road  
Bootle  
Merseyside L20 3NJ

Date:  
Our Ref:  
Your Ref:

**Please contact:**  
**Contact Number:** 0151 934 4712  
**Fax No:** 0151 394 4276  
e-mail:

Dear,

**Re:**  
**Address:**

I refer to the above property, which has today been transferred by the Council under the Enforced Sales Procedure.

In accordance with the procedure agreed with you, I on behalf of the Council and being duly authorised to do so, hereby certify that:

1. as recited in clause [ ] of the Contract for Sale dated [ ] the Act (as referred to therein) contains provision conferring a charge on the Premises and on all estates and interests therein.
2. as further recited in clause [ ] of the said Contract for Sale the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagee by deed.
3. the Council has followed the procedure in the Act as to service of notices and the carrying out of the works.
4. the charge(s) pursuant to which the Council has disposed of the property affect(s) the whole of the property known as [ ] today disposed of by the Council.
5. as recited in clause [ ] of the Contract for Sale the charge(s) pursuant to which the Council has disposed of the property was/were registered in part 2 of the Register of Local Land Charges on the [ ]

Yours faithfully,

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# Agenda Item 16

**REPORT TO:** Cabinet  
Council

**DATE:** 15 April 2010  
13 May 2010

**SUBJECT:** Constitution – Senior Management Structure

**WARDS  
AFFECTED:** All

**REPORT OF:** Interim Head of Corporate Legal Services

**CONTACT  
OFFICER:** Dave Mackey 0151 934 2032

**EXEMPT /  
CONFIDENTIAL:** No

**PURPOSE / SUMMARY:**

To seek Members approval to amend the Council's Constitution to reflect the recent Senior Management Re-structure.

**REASON WHY DECISION REQUIRED:**

The Constitution must be regularly updated to reflect the Council's current structures and any new legislation.

**RECOMMENDATION(S) TO COUNCIL:**

- (i) That Members formally approve the amended Delegations to Officers and consequential minor changes to Portfolios.
- (ii) That the Assistant Chief Executive be formally appointed as the Council's "Scrutiny Officer" as required by Section 31 of the Local Democracy, Economic Development and Construction Act 2009.
- (iii) That the terms of reference of the Standards Committee be amended pursuant to Section 202 of the Local Government & Public Involvement in Health Act 2007.

# Agenda Item 16

**KEY DECISION:** Not applicable

**FORWARD PLAN:** Not applicable

**IMPLEMENTATION DATE:** Following the expiry of the “call-in” period for the Minutes for this meeting.

**ALTERNATIVE OPTIONS:**

The Constitution needs to reflect the Council’s current structure.

**IMPLICATIONS:**

**Budget / Policy Framework:** Not applicable

**Financial:** Not applicable

	<b>2006/ 2007 £</b>	<b>2007/ 2008 £</b>	<b>2008/ 2009 £</b>	<b>2009/ 2010 £</b>
<b><u>CAPITAL EXPENDITURE</u></b>				
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				



**Legal:** Not applicable

**Risk Assessment:** Not applicable

**Asset Management:** Not applicable

**CONSULTATION UNDERTAKEN / VIEWS**

Not applicable.

**CORPORATE OBJECTIVE MONITORING:**

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities		√	
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy	√		
8	Children and Young People		√	

**LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT**

Not applicable.

# Agenda Item 16

## **BACKGROUND:**

- 1.0 As a consequence of the recent Senior Management Restructure it has been necessary to review the Constitution to ensure that appropriate titles, functions and delegations are in place. Members are asked to formally approve the attached amended delegations to Officers and consequent minor amendments to Portfolios which reflect the recent Senior Management Review.
- 2.0 **Appendix 1** sets out the current Senior Management structure. The Constitution reflects that the Chief Executive and three Strategic Directors will have a number of thematic responsibilities and service groupings as follows:-

### **Chief Executive**

<b>Thematic Responsibilities:</b>	<b>Service Groupings:</b>
<ul style="list-style-type: none"><li>• Transformation</li><li>• Intelligence</li><li>• Performance Improvement</li><li>• Communications</li></ul>	<ul style="list-style-type: none"><li>• Policy Development</li><li>• Performance Improvement and Monitoring</li><li>• Communications, Media, Public Relations and Advertising</li><li>• Research and Intelligence</li><li>• Overview &amp; Scrutiny</li><li>• Local Strategic Partnership</li><li>• Democratic Services</li><li>• BSF</li></ul>
	<b>Corporate Services:</b> <ul style="list-style-type: none"><li>• Legal</li><li>• Finance</li><li>• Personnel</li><li>• Procurement and Commissioning</li><li>• Combined Client Functions</li></ul>

## Strategic Director – Childrens Schools and Families

<b>Thematic Responsibilities:</b>	<b>Service Groupings:</b>
<ul style="list-style-type: none"> <li>• Children and Young People</li> <li>• Creating a Learning Community</li> <li>• Safeguarding</li> <li>• Every Child Matters</li> </ul>	<ul style="list-style-type: none"> <li>• Childrens Social Care</li> <li>• Childrens Trust</li> <li>• Schools</li> <li>• Early Years</li> <li>• Extended Schools</li> <li>• Youth Service</li> <li>• Policy 14 – 19 Strategy</li> <li>• Inclusion</li> <li>• Community Delivery</li> <li>• Research and Intelligence</li> </ul>

## Strategic Director – Communities

<b>Thematic Responsibilities:</b>	<b>Service Groupings:</b>
<ul style="list-style-type: none"> <li>• Sustainable Economic Development and Enterprise</li> <li>• Environmental Sustainability</li> <li>• Strategic Asset Management</li> </ul>	<ul style="list-style-type: none"> <li>• Regeneration</li> <li>• Economic Development</li> <li>• Planning</li> <li>• Building Control</li> <li>• Transportation</li> <li>• Neighbourhoods</li> <li>• Strategic Housing and Housing Market Renewal</li> <li>• Environmental Health</li> <li>• Trading Standards</li> <li>• Licensing</li> <li>• Technical Services</li> </ul>
	<p><b>Operational Services</b></p> <ul style="list-style-type: none"> <li>• Waste and Recycling</li> <li>• Street Scene</li> <li>• Public Conveniences</li> <li>• Specialist Transportation</li> <li>• Vehicle Fleet</li> <li>• Management and Maintenance</li> <li>• Building Cleaning</li> <li>• School Crossing</li> <li>• Catering</li> <li>• Security Force</li> </ul>

# Agenda Item 16

## Strategic Director – Social Care and Wellbeing

<b>Thematic Responsibilities:</b>	<b>Service Groupings:</b>
<ul style="list-style-type: none"><li>• Health and Wellbeing</li><li>• Creating Safer, Stronger Communities</li><li>• Personalisation</li><li>• Customer Strategy</li></ul>	<ul style="list-style-type: none"><li>• Adult Social Care</li><li>• Leisure</li><li>• Culture</li><li>• Libraries</li><li>• Cemeteries and Crematoria</li><li>• Tourism</li><li>• Safer/Stronger Communities</li><li>• Community Cohesion</li><li>• Public Health</li><li>• Health Integration</li></ul>

### Scrutiny Officer

Section 31 of the Local Democracy, Economic Development and Construction Act 2009 requires County Councils and Single Tier Authorities to appoint a “Designated/Scrutiny Officer”. The Officer has responsibility to:-

- Promote the role of Overview & Scrutiny Committees
- Provide support for Overview & Scrutiny Committees
- Provide support and guidance to Members and Officers in relation to Overview & Scrutiny Committees

The Officer concerned may not be the Monitoring Officer, Chief Officer or Head of Paid Service. It is recommended that the Assistant Chief Executive who has operational responsibility for the Overview & Scrutiny function should be formally appointed as the “Designated/Scrutiny Officer” and the Constitution has been amended to reflect this proposed appointment.

### Politically Restricted Posts

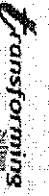
Restrictions on the political activities of Local Government employees were introduced by the Local Government and Housing Act 1989. Originally the post of Independent Adjudicator was created to consider applications from Local Authority employees seeking exemption from political restrictions in respect of their posts and to give general advice on the criteria for designation of politically restricted posts. This function has now been transferred to the Standards Committee and the terms of reference for the Standards Committee have been amended accordingly,

## **3.0 Summary**

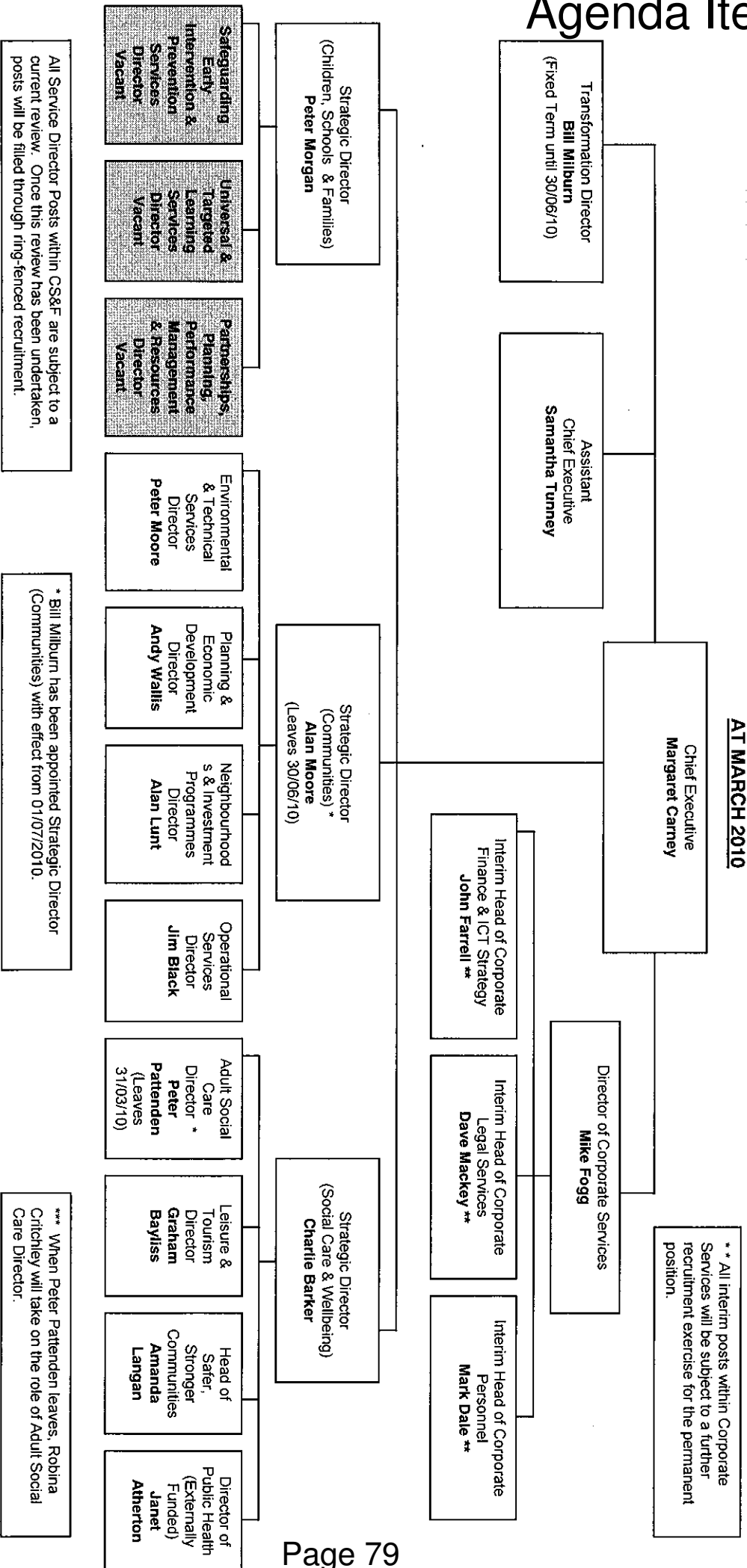
Members are asked to formally approve the amendments to the Council's Constitution as set out above.

Copies of the Constitution, as amended, will be circulated and made available in the offices of the Political Groups and will be circulated to all Members after the forthcoming Local Elections in May.

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**SEFTON COUNCIL  
SENIOR MANAGEMENT STRUCTURE  
AT MARCH 2010**



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# Agenda Item 18

**Meeting:** Council  
**Date of Meeting:** 13 May 2010  
**Title of Report:** Gardner Avenue Allotments, Bootle

**Report of:**

Mr Dave Mackey  
Interim Head of Corporate Legal  
Services

**Contact Officer:**  
(Telephone No.) 0151 934 2032

This report contains	Yes	No
<b>CONFIDENTIAL</b> Information/		√
<b>EXEMPT</b> information by virtue of paragraph(s).....of Part 1 of Schedule 12A to the Local Government Act, 1972 (If information <u>is</u> marked exempt, the Public Interest Test must be applied and favour the exclusion of the information from the press and public).		√
Is the decision on this report <b>DELEGATED?</b>	√	

## **1.0 Purpose of Report**

To report to Members on the Further Report from the Local Government Ombudsman following her investigation into two complaints arising from incidents at the Gardner Avenue Allotment Site, Bootle in 2007. On 15 April 2010 the Cabinet resolved not to accept the action recommended by the Ombudsman and in accordance with Section 31A of the Local Government Act 1974 where it is proposed that no action should be taken in respect of an Ombudsman's Further Report or that the action recommended in that Report should not be taken, consideration of the Further Report shall be referred to the Full Council.

## **2.0 Recommendation(s)**

- (1) Members are requested to consider the Ombudsman's Further Report and
- (2) Members are requested to determine what action to take in respect of the Further Report.

# Agenda Item 18

## Corporate Objective Monitoring

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1.	Creating a Learning Community		√	
2.	Creating Safe Communities		√	
3.	Jobs and Prosperity		√	
4.	Improving Health and Well-Being		√	
5.	Environmental Sustainability		√	
6.	Creating Inclusive Communities		√	
7.	Improving the Quality of Council Services and Strengthening local Democracy	√		
8.	Children and Young People		√	

## Financial Implications

<b><u>CAPITAL EXPENDITURE</u></b>	<b>2009/ 2010 £</b>	<b>2010/ 2011 £</b>	<b>2011/ 2012 £</b>	<b>2012/ 2013 £</b>
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

## Departments consulted in the preparation of this Report

None

## List of background papers relied upon in the preparation of this Report

Further Report on an investigation into Complaint Nos 06/C/15879 and 06/C/16558 against Sefton Council.

## **3.0 Background**

3.1 Members will be aware that the Council has been involved in a longstanding dispute between two factions on the Gardner Avenue Allotment Site, Bootle. A number of complaints have been made to the Ombudsman. On 15 May 2008 Cabinet considered two reports from the Ombudsman. The reports concluded that there had been maladministration by the Council and recommended that the Council should pay compensation to the two Complainants and formally apologise.

3.2 At the meeting Cabinet also considered a petition submitted by residents and also received copies of additional handwritten correspondence which was circulated at the meeting at the request of the Complainants. Members resolved:-

That the report and petition be deferred for further consideration at the next Cabinet Meeting pending the submission of a detailed report by Officers on the two investigations into the Gardner Avenue Allotment Site, Bootle.

3.3 The matter was subsequently reported to the Cabinet Meeting on 12 June 2008 when it was resolved that:-

**(i) The action recommended by the Local Ombudsman in the two reports be not accepted.**

**(ii) The Legal Director be authorised to prepare a statement of the reasons why the Council did not take the action recommended in the two Local Ombudsman's reports.**

3.4 Following the meeting the Ombudsman was advised of the Cabinet decision. Section 31(2a) of the Local Government Act 1974 states that if after issuing a report, the Local Government Ombudsman is not satisfied with the action that the Council has taken she may make a further report setting out those facts and making recommendations. The Council has now received the Ombudsman's further report (attached at Annex A).

3.5 The Ombudsman's powers are contained in the Local Government 1974. The Council is obliged to make copies of the report available for inspection by the public for a period of three weeks. The Authority must give public notice by way of advertisement in local newspapers publicising the fact that copies of the report are available for inspection.

3.6 The Authority has a duty to consider the report within a three months timescale and must advise the Ombudsman as to what action it proposes to take. If the Ombudsman is still not satisfied that the recommendations have been satisfactorily dealt with then she may require the Council to publish a statement in local newspapers and at Council offices stating that she considers the Authority's response to be unsatisfactory, together with details

# Agenda Item 18

of any action recommended by the Ombudsman in the further report. If the Authority wishes, it may also include a statement of the reasons for not having taken the action recommended in the report. The statement must be published in two consecutive weeks in the local newspapers.

- 3.7 On 15 April 2010, the Cabinet considered the report of the Interim Head of Corporate Legal Services which incorporated the Further Report of the Local Government Ombudsman following her investigation into two complaints arising from incidents at the Gardner Avenue Allotment Site, Bootle.

The Cabinet also considered correspondence submitted by the complainants "Mrs B and Mr C" referred to in the report from the Local Government Ombudsman.

- 3.8 **On 15 April 2010**, the Cabinet resolved that:-

- (1) the report and correspondence be noted; and
- (2) having taken full account of the Further Report of the Local Government Ombudsman and in particular the remedies recommended by her, the previous decision taken by the Cabinet to not accept the action recommended by the Ombudsman on the two complaints be reaffirmed and Members remain of the view that it would be inappropriate to apologise or pay compensation to the Complainants.

- 3.9 In accordance with Section 31A of the Local Government Act 1974 where it is proposed that no action should be taken in respect of an Ombudsman's Further Report or that the action recommended in that Report should not be taken, consideration of the Further Report shall be referred to the Full Council.

- 3.10 **Any Members who require any further background information regarding this matter are advised that all relevant papers may be inspected at the office (at Southport Town Hall) of the Interim Head of Corporate Legal Services (Ext 2032) (Dave Mackey) and if necessary, a briefing can be arranged**

## **4.0 Recommendation**

- (1) Members are requested to consider the Ombudsman's Further Report and
- (2) Members are requested to determine what action to take in respect of the Further Report.

# OMBUDSMAN

## Further Report

on an investigation into

complaint nos 06/C/15879 & 06/C/16558

against Sefton Metropolitan Borough Council

25 February 2010

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## **Investigation into complaint nos 06/C/15879 & 06/C/16558 against Sefton Metropolitan Borough Council**

1. Section 31(2A) of the Local Government Act 1974 (as amended) says that if, after issuing a report, the Local Government Ombudsman is not satisfied with the action that an authority has taken or proposes to take, a further report shall be issued setting out those facts and making recommendations.
2. In April 2008 I issued reports following investigations into two separate complaints that related to the Council's management of an allotment site. A long and acrimonious dispute between a number of the allotment holders had been exacerbated by the way that the Council had leased the site to individuals acting on behalf of an unincorporated association; the absence of tenancy agreements; and the actions it took when the unincorporated association was without elected representatives. As a result of the way parties to the dispute conducted themselves, Council officers had been drawn into spending a disproportionate amount of time and effort on issues raised and on previous complaints to the Ombudsman. Investigation of those previous complaints had been discontinued when the Council agreed to take various actions including issuing tenancy agreements on the model used by the National Society of Leisure & Allotment Gardeners (NSALG).
3. My finding on complaint 06/C/15879 was that the Council acted with maladministration causing injustice when it locked Mr C out of the allotment site because he would not sign a tenancy agreement that appeared different to the NSLAG model but was materially the same. I found that the Council had locked Mr C out without regard to his status and rights under allotment law. I did not consider that the Council's desire to bring order to the site could justify it ignoring the law. I recommended that the Council should apologise to Mr C and pay him £25 for each week that he was prevented from working his allotment together with £250 for his time and trouble in pursuing his complaint.
4. Complaint 06/C/16558 concerned the Council's handling of an allegation made against Mr B by another allotment holder and its suggestion that Mr B had received a police caution. I found that, although the Council decided to take no action on the allegation, it had acted with maladministration in forming a view (which it expressed to Mr B in writing) without giving him an opportunity to respond. My investigation established that the police had never cautioned Mr B and therefore a Council statement to me was false. I found that the Council had acted with maladministration in making a claim that was false and recommended that it should: apologise to Mr B, formally retract its statement that he had been cautioned; and pay him £1,000 in recognition of his time, trouble and cost in making his complaint and his distress.

5. After issuing my reports, I was surprised and disappointed to learn of local newspaper reports of comments made on them by Council officers. I wrote to the then Chief Executive on 19 May 2008 setting out the case law on how local authorities should consider an Ombudsman's report. I drew attention to case law about local authority consideration of Local Government Ombudsmen's findings in the case of *Bradley v Secretary of State for Pensions* which dealt, in part, with whether a Minister or Government Department had to accept the findings of the Parliamentary Ombudsman. This confirmed and restated the position established in earlier cases as summarised by Lord Justice Wall:

*In cases involving the Local Government Ombudsman (LGO), the citizen who has invoked his assistance has - in law – no substantive remedy against the local authority concerned if that authority rejects the LGO's conclusion. It is true that the citizen could apply for judicial review of the local authority's decision not to implement the LGO's findings, but the system, as I understand it, depends upon the convention that local authorities will be bound by the findings of the LGO. It must follow inexorably that if a local authority wishes to avoid findings of maladministration made by a LGO, it must apply for judicial review to quash the decision.*

*This, in my judgment was what the Eastleigh case was about and why, with respect, Lord Donaldson of Lynton MR was right to hold that in the context of the 1974 Act, the Parliamentary intention was that "reports by ombudsmen should be loyally accepted by the local authorities concerned": - see [1988] 1 QB 855 at 867A-C.*


6. The Council's Cabinet considered the matter at meetings on 15 May and 12 June. The Cabinet resolved not to accept my recommendations as it was '*... concerned that in all the circumstances to accept the recommendations was unlikely to resolve the conflict on the site.*'
7. My reports were appended to a covering report of Council officers. On seeing a copy of that report I wrote again to the then Chief Executive to express my grave concern about: the introduction of irrelevant considerations by the officers' report and allotment holders attending the meetings; the influence that irrelevant considerations clearly had on the Cabinet's decision; the disrespectful and discourteous comments about my office made in the officers' report; an apparent misapprehension about the content of one of my reports and of the most basic principles of public law. I stressed that my investigations and reports were into the Council's discharge of an administrative function and that I had no interest in the disputatious relationships between allotment holders.

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8. In response, information was provided to me in relation to 06/C/16558 that I pursued with Merseyside Police. The Police again confirmed that no formal caution was ever issued to Mr B but also explained how Council officers could have come to believe that one had. In light of that explanation I am prepared to accept that, although entirely erroneous, Council officers believed that a caution had been issued. This does not, however, obviate my finding that the Council acted with maladministration in claiming that Mr B had been cautioned by the Police when enquiries made through the proper channels would have established that he had not.
9. In the time since I issued my reports there have been significant changes within the Council and further communications with officers. Regrettably, I understand that the Council remains unwilling to apologise to Mr C and Mr B and maintains its view that it would be inappropriate to make the payments I recommended because to do so would perpetuate and inflame the continuing ill-feeling at the allotment site.
10. I am not satisfied with the action taken by Sefton Metropolitan Borough Council since I issued my two reports. I am particularly concerned that the officers ignored the established common law relating to Ombudsman's reports and recommended that the Council should not comply with my recommendations because of their unhappiness with the investigation and my conclusions.
11. The Council should have addressed its mind to the remedies that I recommended for the maladministration that I found i.e.:
  - a. that it had locked Mr C out of his allotment without regard to his status and rights under allotment law, which could not be ignored simply because it wished to restore order to the site;
  - b. that it had formed and expressed in writing a view about Mr B's involvement in an altercation without giving him an opportunity to respond;
  - c. that it falsely claimed that Mr B had been cautioned by the Police;and that it should:
  - retract its suggestion that Mr B had been subject to formal police caution and apologise to him for that and the way it handled a complaint against him;
  - pay Mr B £1,000 for their time, trouble and costs of bringing their complaints to me and for the anguish and distress the allegation of a police caution caused to them;



- apologise to Mr C and compensate him with £25 for every week that he was locked out of his allotment and £250 for his time and trouble in bringing his complaint which could have been avoided by an explanation of the tenancy agreement;
  - ensure that the facts in any dispute about allotments are determined by an independent person and with advice from the National Society of Allotment and Leisure Gardens on allotment law;
  - have clear and accessible policies for dealing with complaints about the behaviour of residents and ensure that officers are properly trained in how to investigate those complaints fairly.
12. I trust that the Council will now give proper consideration to this Further Report.

  
**Anne Seex**  
**Local Government Ombudsman**  
**Beverley House**  
**17 Shipton Road**  
**York**  
**YO30 5FZ**

25 February 2010

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11 April 2010

Submission to Cabinet of 15 April 10 by "Mrs. B" & "Mr. C." in LGO reports.

Item No. 5.

## Gardner Ave. Allotments.

We write as those directly affected by Sefton's maladministration (Mrs. B and Mr. C in LGO reports) and also as spokespersons for a majority of allotment holders (a.hs.) on site.

We request that this submission be formally included in the Cabinet's proceedings and that it be fully minuted, including the full text of all documents provided. We wish to state that in our view, the report compiled by the Leisure Director / Interim head of Corporate Legal Services dated 15 April 2010 is likely to mislead the Cabinet in two main ways :-

- 1) It repeats the mistakes of the earlier report of 15 May 08 by highlighting the same "irrelevant considerations" criticised in the LGO's "further Report" (Page 2 Point 7). The latest report again highlights so called "factions" and also refers to a "Petition" - both of which are irrelevant to the primary cause of our complaints and the LGO's involvement i.e. the mismanagement of the allotments by Leisure Services (L.S.) The LGO has "no interest in relationships between a.hs."
- 2) The report seriously distorts the background to this affair, by focusing only on "factions" which were a secondary result of the Primary Cause. The LGO reports has identified this primary Cause as mismanagement and contravention of the law rather than "factions". See enclosed sheet entitled "Background" for more details on this (Appendix 1).

Also, despite the LGO pointing out case law stating: "reports by ombudsmen should be loyally accepted by the local authorities concerned", the report of 15 April 10 again fails to recommend acceptance.

By adopting a neutral position and giving no direction, it effectively changes nothing from the earlier recommendation in May 08 that the LGO reports be rejected.

This appears to us like disloyalty to

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by omission, a further challenge to the LGO's Authority by certain officers who "did not act lawfully", according to the LGO's public statement in 2008.

We expect members to protect the public from such unlawful officers.

We have had our assets taken from us, have been discriminated against and have suffered anti social behaviour at the hands of a.h.s. supported by L.S.

We therefore look to the Cabinet to abide by the intention of Parliament in the 1974 act and to accept the LGO's reports and act on them in good faith.

We trust the Cabinet will not repeat the injustice to us the Complainants that was represented by the decision of the 12 June 08 "Skeleton" Cabinet when irrelevant considerations were taken account of rather than the merits of the case. That Cabinet denied our case a fair hearing & it lacked "Proportionality".

We also look to the Cabinet to act on the public's behalf by correcting those officers who have acted unlawfully to stop them from treating another large group of innocent citizens in the appalling way they have treated 34 a.h.s., and make sure they never again abuse their authority.

The public should not have to endure the sort of Campaign of Theft, Bullying, intimidation, breaches of privacy and character assassination we have suffered in what should be a leisure activity, particularly for the many elderly a.h.s. in our group in their retirement years.

J. G. Dole

and on behalf of "Mrs. B" (LGO Report)

('Mr C' LGO reports)

The GAAT Group

Enclosed:

- 1) "Background" dated 11 April 10 (4 pages)
- 2) Cabinet Submission " 3 June 08 (2 pages)
- 3) " " " 14 May 08 (4 pages)

Submission to Cabinet of 15 April 2010 re: Gardner Ave. Allotments  
(by "Mrs. B" and "Mr. C." LGO reports)

### Background.

We wish to again refute the misleading statement in the report by the Leisure Director of 15 April 10 that "... the Council has been involved in a long standing dispute between two factions on Gardner Ave. allotments".

This seriously distorts the background to this affair and we believe Leisure Services (L.S.) have been doing this for the duration in order to avoid responsibility for their own PROVEN malpractices and contraventions of the law.

The LGO has identified some of these contraventions in her "further report" which confirm what she publicly stated two years ago that "Officers did not act lawfully...".

The primary cause of the maladministration identified, and of our Complaints to the LGO, is not "factions" on site, it is the mismanagement of the site by L.S.

This is a proven fact which the two reports for the Cabinet compiled by officers (i.e. 15 May 08 and now 15 April 10) have tried to cover up by means of their 'man of straw' - warring factions.

That mismanagement has involved habitual contraventions of the law and blatant discrimination against a majority on site in favour of a few council sponsored agitators. We have vast evidence to support this claim.

L.S. officers refuse to accept that the evidence proves their wrongdoings and the LGO having seen this evidence had no option but to conclude that "Officers did not act lawfully...". That is why Setton have received three public reports, not because of so called "factions".

The reality at site level is that any "factions" that formed only did so as a secondary consequence of the primary cause outlined above. It is dishonest to ignore this reality.

The total support L.S. gave to the agitators (mainly Mr. X and his Partner) and the

# Agenda Item 18

disorder caused by their continual anti social behaviour, on top of L.S. habitually contravening the law in their management of the site, is what directly caused any polarisation to happen.

This situation is reflected in the four Petitions signed by a majority of allotment holders (a.hs.) over a four year period requesting, among other things, that L.S. restore good order by dealing with the troublemakers and returning our Money and the trading hut.

The last petition was signed by 40 a.hs. - a large majority on the site.

L.S. ignored all the petitions and with them the views of the majority and instead allowed the disorder of anti social behaviour and the theft of our assets to continue, and they continued to support their favoured small 'faction' containing the agitators.

Another key part of L.S. mismanagement was their role in forming a new Association (G.A.A.A.) in Jan. 05 following the resignation of the Committee of the original Society (G.A.A.S.).

The Committee resigned following serious anti social behavior at a meeting, by the agitators, who L.S. supported, instead of evicting as their appalling behaviour warranted.

L.S. then directly forced the original Society to hand over all assets (ie. Tools, trading stock, money in bank, documentation, and a trading hut they used) to the new GAAA.

The approximate value of these assets was £4000 plus.

We have it in writing off the LGO that :-

"It was maladministration by the Council to allow the funds and assets of GAAS to be transferred to GAAA." and :-

"It was maladministration by the Council to deal with GAAA as the successor of GAAS."

"GAAA does not have a mandate from the majority of a.hs."

L.S. refuse to accept these facts and for years have recognised the new GAAA (described by the LGO as an "illegitimate group") and allowed them to act as their agents on site whilst at the same time ignoring the majority view and everything we raised.

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L.S. then allowed the newly-formed group (G.A.A.A) to then hijack the name of the original Society. In Feb. 05 after 2 or 3 weeks in existence as a newly formed Association - Formed with L.S. help - complete<sup>with</sup> a new set of rules and constitution, they illegally changed their name to the G.A.A. Society.

They have since been allowed by L.S. for 5 years to deceive the site by fraudulently masquerading as the Society (GAAS), when they voted themselves into existence as a new Association (GAAA), despite the Leisure Director agreeing a "local Settlement" with the LGO in Feb 06 part of which said "The new Association is NOT a continuation of the original Society!"

The LGO insisted on this at the time because it was such a pivotal issue. Had Setton refused to accept it, they would have been given a Public report regarding it.

Despite this, L.S. have done nothing to restore the assets they took, back to their rightful owners. They failed to even acknowledge an Invoice for the reimbursement of the assets that we were advised to send in Jan. 07, and instead they allowed a Councillor (See first LGO reports April 08) and latterly one of their favoured group, to act as Secretary of the "illegitimate group" (LGO's description) masquerading as the GAAS and controlling all the assets of a separate and distinct Society, without doing anything to stop them. L.S. have in practice continued to recognise this group as a continuation of the original Society despite what the Leisure Director agreed with the LGO FOUR YEARS ago.

The only reason this disorder and chaos has occurred is because of L.S. mismanagement and their support for the agitators and the new Association. It amounts to Council Sponsored disorder and blatant discrimination against the innocent majority.

It's important to note that Gardner Ave. was always a peaceful site prior to the arrival of a certain a.h. - as L.S. themselves admitted to the LGO and a majority would certainly confirm. The support that he and his partner received off Setton (both Officers and Councillors) is what destabilized the site, because they were allowed to do almost as they pleased.

As soon as he left the site approx. 18 months ago the former tranquility immediately began

# Agenda Item 18

to return, except for the ongoing issues of L.S. mismanagement and the remaining agitator holding the site to ransom regarding the assets he has no right to control, and L.S. failure to discipline or stop him.

This restored calm is proof positive that this is not primarily about "warring factions", it is about malpractice by L.S. officers who "did not act lawfully".

We also note that the report off the Leisure Director again refers to the "Petition" (Point 2). We made a submission to Cabinet on 12 June 08 (copy enclosed) regarding this to point out that 60% of those who signed it are not allotment holders, and we know many of them had not seen the LGO reports that "incensed" them so much. Yet that petition was minuted and published on Sefton's web site, allowing the media to quote it.

In Contrast, our submissions were not published or minuted. L.S. ignored FOUR petitions signed by a majority on site, yet they published and minuted a minority petition signed by only 12 ahs., nearly half of whom have now left the site.

We view this as the sort of blatant discrimination to silence the majority view in favour of a small council sponsored "illegitimate" group, that we've suffered for years.

In her earlier reports of April 08 the LGO stated "local settlements depend on councils demonstrating good faith and doing what has been agreed" (Page 3).

The Leisure Director agreed a "local settlement" FOUR YEARS ago, yet we have still not had our assets reimbursed, we do not have the Tenancy Agreement promised nor have they appointed an officer to the site who is impartial.

In short, he has not done what he agreed and has demonstrated BAD FAITH, as we have experienced non stop for 5 years.

A further example of this is the claim made in the Cabinet report of 15 May 08 that Mrs. B. and Mr. C. are a Cause of disorder. We again request that he either provides evidence for this claim or withdraw it from Sefton's web site. Acting as spokespersons for a majority on site or having our complaints upheld by the LGO does not equate to causing disorder!



Address Withheld.  
Liverpool L21 5HR.

3 June 08.

2

F.A.O. The Legal Director.

Copy letter

Addendum to submission to the Cabinet (dated 14 May 08)

re: Gardner Ave. Allotments - Ombudsman's reports.

We wish to bring to the Cabinet's attention certain concerns regarding the petition submitted by Ralph James to the Cabinet meeting of 15 May 08 (Item No. 6).

We are not contesting that 25+ signatures of Sefton residents should have allowed him to speak - that is not our complaint.

However we do wish to point out that of the 32 people who signed to say how they "strongly objected" to the LGO reports and how "incensed" they are at the LGO's conclusions, only 12 are active allotment holders (a.h.'s), meaning that 20 have little or nothing to do with the site, more than 60%. Also, two are not Sefton residents.

In fact, of the 32 names, Mr. X's small faction comprises a max. of 7 active a.h.'s, 5 others are on the fringes and the remaining 20 are wives, in-laws, friends and children of a.h.'s. who have virtually nothing to do with the allotments at Gardner Ave.

We are reliably informed that some of the signatures may have been obtained without full knowledge of what was being signed because they had not read or even seen the reports, so could not credibly sign a petition whose wording was specific. As such it needed an informed knowledge before strongly objecting or being incensed at the reports. Even the Councillor who sponsored it now denies that he supports their cause or that he ever read either the petition or the reports.

What can be the justice if over 60% of those who sign a petition specifically relating to two reports, have nothing to do with the site and have virtually no knowledge of what the reports say.

One LGO report specifically exonerated 'Mr. B' of slanderous allegations and MOST IMPORTANTLY restored his good name and character which Sefton had tried to denigrate (See point 18). The other report upheld Mr. C's complaint about Sefton's malpractice towards himself.

Why such conclusions should "incen Page 97 people who are not a.h.'s and never

# Agenda Item 18

attend the site leads us to one conclusion only - that someone is still trying to unjustly denigrate the character of 'Mr. B' not only by their bitter refusal to accept the LGO's conclusions which were based on irrefutable evidence, but also by language stating that 32 people were "incensed" - This is simply not true.

What concerns us most is that this petition with its implied refusal to accept that Mr. B's character has been exonerated, has now been made official in the Cabinet minutes published on Sefton's web site, yet the late written submission we provided (dated 14 May 08) has not been minuted and made official, even though it was the main reason the Cabinet deferred its decision.

We therefore request the Cabinet to review these issues and if necessary correct them because we feel the good name of 'Mr. B' is again being questioned.

J. G. Bola and on behalf of "Mrs. B." - LGO Report.

(Mr. C.) The Complainants. ('Mrs. B')

The GAAT Group  
(Gordner Avenue Allotments Tenants.)

From: Jim Dolan, # "Mrs. B" (4 pages)

To: Caroline Elwood. - Legal Director (934-2194)

14 May 08

Copy letter  
Submission for Cabinet's Attention.

Dear Mrs. Elwood,

We are writing to formally request that this letter be read out or submitted to the Cabinet at their meeting on Thursday 15 May 08 when considering item No 6 on the Agenda - Gardner Ave. Allotments - LGO Public Reports.

- 1) We consider the report compiled by Leisure Services/Legal Director for the above meeting to be grossly inaccurate and it also fails to reflect the main events as well as the huge quantity of evidence of malpractice by Sefton Council, particularly Leisure Services (L.S.), which has been submitted to the LGO.
- 2) The report wrongly diagnoses the situation as "a long standing dispute between two factions" when in fact the evidence shows that it has been an artificially contrived dispute - possibly linked to unofficial attempts to get access to the landfill site through the allotments - designed to destabilize the site and caused largely by L.S. failure to deal with a small disruptive "faction" who have continually been allowed by L.S. to provoke trouble by using threatening and intimidating behavior towards innocent allotment holders (a.h.s).
- 3) Not only did L.S. fail to deal with this "faction", they elevated them to the position as Sefton's unofficial agents on site, causing prolonged distress to a majority on site who'd never caused any trouble. The evidence supports this claim as does the fact that for a long time, Senior Officers in L.S. have been on 1st name terms with this small "faction", yet have totally ignored our group, which represented a Majority. L.S. also effectively removed assets worth more than £3250 off the original Society by forcing them into the hands of a newly formed Association - formed by L.S. They also took the trading hut off its legal owner, i.e. those 4 a.h's who's labour and materials built it, and later gave it to an a.h. with absolutely no claim or right to it. L.S. have refused repeated requests to ensure its return, denying a majority group on site access to a trading hut for 3½ years, which will result in a large compensation claim against L.S.
- 4) The evidence supports these claims and the LGO has ruled that the New Association is not a continuation of the original <sup>1</sup> despite L.S. denials or those of their "faction".

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This LGO ruling makes L.S. deeply complicit in theft and also the fraudulent situation for 3½ years of the new Association masquerading as the original Society.

5) The Group on who's behalf we speak, has consistently represented 34 a.h's, mainly pensioners and others in poor health, with a Combined 'Service' on site of nearly 500 years, representing a majority of the site (until the recent departures of at least five of them, as a direct result of Soffin's failure to restore good order) who have never caused any problems in the past.

Yet L.S. have continually discriminated against us by ignoring three petitions sent over a 3 year period expressing serious concerns and requesting L.S. to act to restore good order, as well as mountains of letters and complaints off a.h's, distressed at L.S. actions. At the same time, L.S. have consistently supported and protected their "faction" on site. In our view, the evidence shows :-

6) L.S. unjustly threatened 34 a.h's with eviction in March 05 in contradiction to Allotment Law, they regained control of the site on 12 May 06 BEFORE regaining the lease, Contrary to the Landlord & Tenants act, as was their failure to allow the trustee his legal entitlement to 3 months notice to quit, they exceeded their authority on 10 May 06 in taking control of property that was not theirs (The trading hut) with a heavy handed operation involving up to NINE Council Staff in an operation arranged overnight by Senior Council figures, and they then sent Four Officers to site every Saturday for 12 weeks to ensure the trading hut was opened by their "FACTION" when there was little demand, they have habitually allowed the 1986 Public order act to be breached and have shielded those who have breached it, and they actually breached the act themselves on 10 May 06 and the following 12 weeks by their show of force and intimidating behaviour which caused huge distress to a majority of a.h's. Their actions have contravened the provisions of the human rights act and they have failed in their "Positive Obligations" to ensure the act is complied with. There has also been continual breaches of privacy regarding our private correspondence sent to Council Offices. In effect, our group has been subjected to a lengthy campaign of bullying, discrimination and intimidation by Soffin Council which has involved officers

failing to "act lawfully" as the LGO herself recently admitted publicly (Southport Champion 23 April 08).

7) We have been forced to spend a huge amount of time for 3½ years defending ourselves from unjust attacks off L.S. and trying to reclaim the assets of the original Society and the trading hut, as well as trying to correct a continual stream of disinformation containing untruths, fabrications and attempts to damage those a.h.'s. who originally complained to the LGO, ie. Mrs B, Mr C, and Mr. Jones R.I.P. This report off L.S./legal Director is a further example of this in that it distorts the truth and attempts to switch the focus from L.S. multiple malpractices onto innocent a.h.'s.

The blame for excessive Senior Officer hours being spent lies squarely with those officers who've acted unlawfully & have stubbornly refused to act on evidence or the LGO's recommendations, rather than false information.

8) With regard to point 17.1 in the Summary "The Council has managed to bring a sense of order to the majority of tenants with the notable exception of Mr.C & Mrs.B." We feel L.S. should be forced to support such a derogatory statement with any hard evidence they have that Mr.C & Mrs.B are in some way a source of disorder on site, or withdraw their claim. We find it unjustified and an attack on our reputation. Remember Mr. C., Mrs. B., (and Mr. Jones R.I.P.) as the original complainants to the LGO have acted on behalf of our group of 34 a.h.'s. for 3½ years, and our complaints have in no way been resolved.

9) With regard to point 17.4 we would ask, how did L.S. arrive at such a conclusion? They have not asked our views regarding this. We feel their conclusion reflects only the feelings of their tiny "faction" on site and is not credible.

Our group will be happy if Seton act to restore order by acting on the LGO's reports, and particularly if they fully implement the settlement they verbally agreed with the LGO more than 2 years ago, 80% of which has not been implemented. We also seek the immediate return of the assets and most importantly, the Trading hut. The LGO told us in Jan. 07 that "it has fallen to those whose complaints have been upheld (Mr.C., Mrs B, Mr. J. R.I.P.) to seek the return of the assets".

# Agenda Item 18

The LGO has been no friend of ours and has displayed bias in favour of Sefton. We are not happy with the conduct of the LGO enquiry and will be taking the matter further. However, any statements made by the LGO have been forced on them not by us, but by the weight of hard evidence to support our Complaints, so they should not be dismissed lightly.

- 10) The L.S./Legal Director report takes sides by speaking on behalf of a so called "faction" - their own "faction" - which is obviously not the role of such a report. It is not unexpected that L.S. should defend their 'faction'
- 11) L.S. have consistently stated they will abide by the LGO's recommendations. We have consistently stated that L.S. have shown nothing but bad faith. Their refusal to implement the settlements or to now accept the LGO's reports is in our view further confirmation of their RANK BAD FAITH.
- 12) In our view, the report produced by L.S./Legal Director is so inaccurate as to be grounds for a fresh complaint to the LGO of maladministration, and we have the hard evidence to substantiate claims made in this letter
- 13) In our view, L.S. have seriously misled their unofficial agents (or faction) on site into believing that intimidating behaviour, fraud and the theft of assets is legitimate and acceptable to Sefton. L.S. have allowed it and have failed to correct them and ensure that such malpractice ceases. As a result officers have failed in their constitutional and legal responsibilities to protect a majority of a.h.'s from malpractice on a public amenity, and it continues to this day.
- 14) A L.S. officer was forced (under Contempt of Court powers used by the LGO) to attend the LGO's offices in York in Nov. 06. We are led to believe that at that time Sefton had intentions of excluding, if possible, two innocent a.h.'s from site, Mr. B & Mr. C. The officer was told such action was inadvisable and to back off. Within weeks both a.h.'s were under attack and Mr. C was excluded from site, resulting in two public reports. The LGO's advice was ignored and Sefton now reap the reward.

compiled by: J.G. Rola § "Mrs. R" on behalf of the GAAT Group.

## COUNCIL - 13 MAY 2010

### **REPORT OF THE LEADER OF THE COUNCIL - MATTERS DEALT WITH IN ACCORDANCE WITH RULE 17 OF THE SCRUTINY PROCEDURE RULES (CALL-IN AND URGENCY)**

I wish to report that the Chair of the relevant Overview and Scrutiny Committee has given his consent, under Rule 17 of the Scrutiny Procedure Rules, to the following issues being dealt with, on the basis that the decisions could not be reasonable deferred and therefore not subject to call-in.

#### **CABINET - 15 APRIL 2010**

#### **341. PROPOSED REPLACEMENT NETHERTON ACTIVITY CENTRE**

The Cabinet considered the report of the Strategic Director - Communities on the second stage tender submissions received for the construction of a replacement Netherton Activity Centre.

RESOLVED: That

- (1) the Strategic Director - Communities be authorised, in conjunction with Capita Symonds Ltd., to provisionally appoint Conlon Construction Limited of Preston as the preferred contractor for the project and for the Environmental and Technical Services Director to establish a target cost for the project; and
- (2) it be noted that the Chair of the Overview and Scrutiny Committee (Performance and Corporate Services) has given his consent, under Rule 17 of the Scrutiny Procedure Rules, for this decision to be treated as urgent and not subject to "call in" on the basis that any delay in the implementation of the decision will prevent the commencement of the intensive pre-contract cost agreement process which in turn will prevent the commencement and completion of works in accordance with the required Programme.

D. Mackey  
Interim Head of Corporate Legal Services

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