
Report to:	Standards Committee	Date of Meeting:	13 March 2012
	Audit and Governance Committee		28 March 2012
	Cabinet		29 March 2012
	Council		12 April 2012

Subject: The Future of the Standards Regime at Sefton Council

Report of: Head of Corporate Legal Services

Wards Affected: No

Is this a Key Decision? No

Is it included in the Forward Plan?
Yes

Exempt/Confidential

No

Purpose/Summary

1. To provide a further update on the impact of the Localism Act 2011 and the current standards regime, and;
2. To outline possible future arrangements for the conduct of standards in Sefton

Recommendations:

1. That the Standards Committee ceases to exist with effect from 30 June 2012.
2. That the work of the current Standards Committee be merged with that of the Council's Audit and Governance Committee. That the case-work of the current Standards Sub Committees continue, but to now be overseen by the Audit and Governance Committee.
3. That the draft Code of Conduct (Appendix A) as prepared by the Association of County Secretaries and Solicitors (ACSeS) be adopted by the Council with effect from 1 July 2012, subject to recommendations 9 and 10 below.
4. That the need for a meeting of the Standards Committee or its successor is dispensed with in the circumstances outlined in paragraph 6.
5. That authority be delegated to the Hearings Sub-Committee to impose the range of sanctions identified in paragraph 7 below on a Councillor should he/she have been found to be in breach of the Code of Conduct.
6. That the Monitoring Officer be delegated authority to make arrangements for the advertisement, recruitment of an Independent Member (IP) and for standby IP's in consultation with a working group of members (max 5 members) drawn from the current Standards Committee.
7. That the Monitoring Officer prepares the new register of interests in conjunction with the Head of Governance and Civic Services to comply with the new Code of

Conduct, and the Act and ensure that the register is available for inspection.

8. That the Monitoring Officer ensures that members are made aware of their new obligations under the Act in due course
9. In addition to the draft Code of Conduct prepared by ACSeS it is recommended that the Code of Conduct includes a provision to ensure that members update their register of interests within 2 months of the date that a change occurs.
10. That an addition be made to the ACSeS draft Code of Conduct that where a member discloses a Dislosable Pecuniary Interest (DPI), that they must withdraw from the meeting room, including from the public gallery, during the whole consideration of any item of business in which he/she has an interest, except where he/she is permitted to remain as a result of a grant of a dispensation.
11. To agree that the necessary changes be made to the terms of reference of the Audit & Governance Committee and that the Council's Constitution be amended accordingly.

How does the decision contribute to the Council's Corporate Objectives?

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

Reasons for the Recommendation:

To ensure that the authority is compliant with the requirements of the Localism Act 2011.
To try to optimise the administrative arrangements to support the new legal framework.

What will it cost and how will it be financed?

(A) Revenue Costs

Nil

(B) Capital Costs

Nil

Implications:

Legal: Legal implications are contained within the report

Human Resources: Nil

Equality

- | | | |
|----|--|-------------------------------------|
| 1. | No Equality Implication | <input checked="" type="checkbox"/> |
| 2. | Equality Implications identified and mitigated | <input type="checkbox"/> |
| 3. | Equality Implication identified and risk remains | <input type="checkbox"/> |

Impact on Service Delivery:

The recommendation to remove the Standards Committee will mean that there is one less meeting to be serviced by officers of the Council.

The proposed merging of the work of the Standards Committee with the Audit and Governance Committee will give greater context to work.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD1410) has been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

Standards Committee could continue as a committee, with changed terms of reference and work to a revised legal framework.

Implementation Date for the Decision

1 July 2012

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Background Papers: Nil

1. Introduction/Background

- 1.1 A report on the Localism Act 2011 and its implications was presented to the Standards Committee on 29 November 2011. The Act had only received Royal Assent on 15 November 2011.
- 1.2 Since then officers have had the opportunity to understand more of the impact of the new Act and to liaise with its Parish Councils and other Merseyside Authorities.
- 1.3 The Act makes fundamental changes to the regulation of standards of conduct for Sefton's elected members, co-opted members and parish councillors. The date for implementation of these changes is 1 July 2012. This report describes those changes in more detail and recommends the necessary steps for the Council to implement the new regime.
- 1.4 The report has been considered at the Cabinet Member meeting for Performance and Governance on 8 March, the Standards Committee on 13 March, Audit & Governance and Committee on 28 March and Cabinet on 29 March 2012. The key issues identified in the report have been largely agreed with by members. The main issue that emerged at the Standards Committee was whether the Standards Committee should cease or not. Alternative options identified by the Standards Committee included, continuation of the Committee in its current form or continuation in its current form but as a sub committee of the Audit and Governance Committee.
- 1.5 These options were subsequently considered at both the Audit and Governance Committee and Cabinet. Both meetings resolved that the Standards Committee should cease and that the business of the Standards Committee be merged with that of the Audit and Governance Committee (*Recommendations 1 and 2 refer*).

2. The duty to promote and maintain high standards of conduct

The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members (Section 27 Localism Act 2011).

3. The future of the Standards Committee

- 3.1 The Act repeals Section 55 of the Local Government Act 2000, which made it mandatory for each Council to have a Standards Committee. In other words, there will be no requirement for there to be a Standards Committee of the Council after 30 June 2012.
- 3.2 In repealing the Section 55 Local Government Act 2000 statute as set out above, the unique requirements of the existing Standards Committee are also repealed. This means that in establishing any new Standards regime the following arrangements can apply:
 - 3.2.1 The committee with the responsibility for the new standards regime will be governed by proportionality.

- 3.2.2 The current restriction that only 1 Cabinet Member can be a member of the Committee governing the standards arrangements will cease to apply.
- 3.2.3 The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (IP's) and provides that existing co-opted independent members of the current Standards Committee cannot serve as IP's for 5 years. This part of the Act is currently the subject of further lobbying and this provision may change.
- 3.3 There will still be a need to deal with standards issues and case work arising from complaints from members of the public, officers of the Council or other councillors.
- 3.4 To that end it is therefore recommended that the Standards Committee cease to exist with effect from 30 June 2012. (*Recommendation 1*)
- 3.5 Following that, the work of the Standards Committee be merged with that of the Council's Audit and Governance Committee and the necessary changes be made to the terms of reference and the Council's Constitution and be recommended to Council in due course. (*Recommendation 2*)

4. Code of Conduct

- 4.1 The Act also repeals the Model Code of Conduct which was adopted by Sefton Council in July 2008 as well as the 10 General Principles of Public Life. This means that Councillors will no longer need to give a general undertaking to comply with the Code of Conduct, either on their election to office or annually. However, the Council will be required to adopt a new Code of Conduct governing, elected and co-opted Members which will apply when they are acting in those capacities. Notably any new Code of Conduct must be consistent with the following seven principles which are drawn from the previous ten General Principles of Public Life:
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
- 4.2 What the Code can now contain is at the discretion of each individual Council, so long as it is consistent with those Principles cited above. If Council's wish to include additional requirements such as the previous General Principles (which were Stewardship, Personal Judgement, Duty to uphold the law and Respect for Others) again that is a matter for each individual Council.
- 4.3 As was noted in the last report to Members of the Standards Committee a number of Sefton Councillors and more generally Councillors within the Merseyside region are also Members of another council or public body. For example some Sefton Councillors are also parish Councillors. In addition some Sefton Councillors are also members of Merseyside wide bodies such as Fire, Transport, Waste Disposal

and Police authorities. However, nationally police authorities will cease to exist in November 2012.

- 4.4 Given the need for transparency and consistency amongst the myriad of councils and public bodies within Merseyside, there appears to be consensus that whatever Code is adopted be consistent amongst those bodies. To that end it is proposed to adopt the Code of Conduct as prepared by the Association County Solicitors and Secretaries (ACSeS). The draft Code is attached at **Appendix A** for information. (*Recommendation 3*)
- 4.5 The Act requires that any Code of Conduct adopted must include appropriate provisions for the registration and disclosure of pecuniary and non-pecuniary interests.

5. Registration Arrangements for and Declarations of Interest

- 5.1 Regulations, yet to be made under the Act will define Disclosable Pecuniary Interests (DPI's). The Act is clear that any Councillor with a DPI will not be able to participate in the Council's business for that item and the Council can reflect this in its Constitution (Standing Orders).
- 5.2 The Code of Conduct will need to be amended when the Regulations are released with respect to the definition and disclosure arrangements for pecuniary and non-pecuniary interests.
- 5.3 In these circumstances, it is therefore recommended that the current arrangements continue for the registration and disclosure of interests until the new Regulations are available and that officers prepare a report accordingly. Members of the Committee are asked to note that it may be necessary to hold an additional Standards Committee to address this and any other miscellaneous issues arising from the new arrangements.

6. Standards Casework

- 6.1 The Act requires a Council to adopt 'arrangements' for dealing with complaints/breaches of the Code of Conduct. In considering such arrangements, Councils should be mindful that it is no longer a statutory requirement to have separate Assessment, Review and Hearings Sub-Committees. This means that the Council can establish its own processes, which could include delegation of some decisions to officers. In considering this possible delegation, attention is drawn to the following types of decisions:
- No discernible breach of the Code of Conduct/no jurisdiction
 - Dealing with complaints in writing as opposed to holding a meeting in particular:
 - Prior to the assessment meeting
 - Where there is a finding of no breach following an investigation

No discernible breach of the Code of Conduct/No jurisdiction

- 6.2 Complainants do not always readily identify what part of the Code of Conduct has been breached, or in fact do not fall within the jurisdiction of the Standards Committee at all and on occasion may need to be directed elsewhere. In these

circumstances it is proposed to give authority to the Monitoring Officer and deputies to correspond with complainant to consider whether a breach of the Code of Conduct can be clearly determined and if it cannot to write to the complainant confirming that no further action will be taken, or to direct the complainant elsewhere as appropriate.

Dealing with complaints in writing

- 6.3 There are currently two main scenarios where it would be more efficient for the Monitoring Officer and/or Deputies to begin to progress matters in writing before convening a sub-committee meeting. Those two scenarios are when a complaint is received, and following an investigation where there is a finding of no breach of the Code of Conduct. In the first scenario, it can be helpful to the Assessment Sub-Committee if a preliminary response is obtained from the councillor(s) complained about so that this information could be included with the Assessment Sub-Committee papers. In the second scenario where an investigator finds no breach of the Code of Conduct it would be helpful to circulate this to Assessment Sub-Committee members in writing for consideration and only call a meeting if there is no consensus with the investigator's findings. If there was consensus then the case could be dispensed with by way of circulation of the investigators report to relevant parties' and the complaint, the IP and in due course the Audit and Governance Committee.
- 6.4 It is therefore recommended in future that the current arrangements for dealing with casework through the sub committees are retained but transferred to the Audit and Governance Committee, who will retain oversight. These sub-committee arrangements can be reviewed once the level of casework is understood under the new Act and the regulations are available.
(Recommendation 2)
- 6.5 It is also recommended that the Monitoring Officer and/or Deputies be given authority to deal with certain prescribed matters, as set out above, in writing without the need to convene meetings. Such steps to be taken in consultation with the IP. It is also recommended that these delegations be noted in the Council's constitution accordingly. *(Recommendation 4)*

7. Sanctions

- 7.1 The former sanction provisions are now removed by the Localism Act 2011. There can therefore be no suspensions, no requirement to attend training etc. When a sanction is imposed there is no mechanism under the legislation to appeal. This means that any decision could be open to judicial review by the High Court if it was clearly unreasonable, improperly taken, or imposed a sanction which the Council does not have the power to impose. Under the new legislation where a Councillor is found to have breached the Code of Conduct the following actions can be taken:
- 7.1.1 Report the findings of the hearing, to Council for information;
- 7.1.2 Recommend to the Councillors Group Leader that the Councillor be removed from any or all Committees/Sub-Committees of the Council. Where Councillors do not belong to Group such a recommendation could be made to full Council;
- 7.1.3 Recommend to the Leader of the Council that a Councillor be removed from the Cabinet or removed from particular portfolio responsibilities;

- 7.1.4 Arrange training for a Member;
 - 7.1.5 Recommend to Cabinet to remove the Councillor from all outside body appointments to which the Councillor has been appointed or nominated to by the Council;
 - 7.1.6 Dependent upon the nature of the breach, one of the following might be appropriate; withdrawal of facilities such as use of Council email, equipment etc may be appropriate; or, exclusion of a Councillor from Council offices except to attend meetings.
- 7.2 It is therefore recommended that Council delegate authority to the Hearings Sub-Committee the above sanctions which could be imposed on a Councillor should he/she have been found to be in breach of the Code of Conduct.
(Recommendation 5)

8. Independent Persons (IP's)

- 8.1 Any arrangements made by the Council under the Localism Act as set out earlier in the report must include the appointment of one IP.
- 8.2 The IP must be appointed through the process of a public advertisement. Appointment is by way a positive majority of all members of the Council (not just the majority of those present and voting). The legislation sets out certain criteria which mean that the IP would not be considered to be independent if one of the following criteria were met:
- 8.2.1 He/she is or has been within the last 5 years, an elected or co-opted member or an officer of the Council;
 - 8.2.2 He/She is or has been within the last 5 years, an elected, or co-opted member of any Committee or Sub-Committee of the Council (which would preclude any of the current co-opted independent members of the Standards Committee from being appointed as an IP); or
 - 8.2.3 He/She is a close relative or close friend of a current elected or co-opted member or officer of the Council, or of any elected or co-opted member of any Committee or Sub-Committee of the Council. For these purposes 'relative' includes:
 - a) The candidate's spouse or civil partner
 - b) Any person with whom the candidate is living as if they are spouses or civil partners
 - c) The candidates grandparents
 - d) Any person who is a lineal descendent of the candidate's grandparent
 - e) A parent, brother, sister or child of anyone in paragraphs (a) or (b) above
 - f) The spouse or civil partner of anyone within paragraphs (c), (d) or (e) above
 - g) Any person living with a person in paragraphs (c), (d) or (e) as if they were a spouse or civil partner to that person
- 8.3 The IP will conduct some key functions which are listed below:
- 8.3.1 An IP must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct. In addition an IP must be consulted in respect of a decision to take no action where the investigation finds no evidence of breach, on any local resolution of the complaint etc

- 8.3.2 An IP may be consulted by the Council in respect of a standards complaint at any stage; and
- 8.3.3 An IP may be consulted by a Councillor or co-opted member of the Council against whom the complaint has been made. This seems an ill conceived proposal as this could cause a later conflict of interest when the IP is consulted on the determination of that complaint.

Recruitment and Selection of IP's

- 8.4 The Act gives discretion to appoint one or more IP's. However each IP must be consulted before any decision is taken on a complaint, which has been investigated. There would therefore seem to be little advantage in formally appointing more than one IP. However should the IP be unavailable or as set out above conflicted from involvement, then arrangements may need to be made for another IP to be available at short notice i.e. without the need to advertise, recruit and appoint etc. To that end, it is proposed that through the recruitment process, up to two standby IP's are selected that could be activated at short notice. It is recommended that such recruitment process be conducted in conjunction with a small working group of members (maximum 5) drawn from the current Standards Committee. (*Recommendation 6*)

9. Register of Interests

- 9.1 The Monitoring Officer is obliged under the Act to maintain a register of interests which must be available for inspection and available on the Council's website.
- 9.2 The Act as previously advised earlier in the report, removes the current definitions of personal and prejudicial interests and replaces it with the as yet undefined Disclosable Pecuniary Interest (DPI). Whilst regulations to define the DPI are awaited, it is anticipated that the definition may equate to the current definition of a prejudicial interest. A member's duty to register interests extends beyond their own interests for the first time and will include interests of their spouse/civil partner, or someone living with the Councillor in a similar capacity.
- 9.3 The register of interests is now also required to include a mechanism to record and disclose non-pecuniary interests as well as the formal DPI's. Upon election a Councillor will be required to register a DPI within 28 days of becoming a member. Failure to do so is a criminal offence. Failure to register the DPI does not however prevent a Member from continuing to act as a Member. Where the Code of Conduct requires registration of an interests i.e. the non-pecuniary interests, failure to do so, would be a breach of the Code only and not a criminal offence.
- 9.4 The requirement for a member to keep the register up to date is removed except on re-election. However it is recommended that members will be strongly encouraged to register their interests as it negates the need to orally disclose the interest at the meeting. It is the Monitoring Officers' responsibility to ensure that any new notifications are added to the register accordingly.
- 9.5 It is therefore recommended that the Monitoring Officer prepare the new register of interests in conjunction with the Head of Governance and Civic Services to comply with the new Code of Conduct, and the Act and that the register is available for inspection. (*Recommendation 7*)

- 9.6 It is also recommended that the Monitoring Officer ensures that members are made aware of their new obligations under the Act in due course.
- 9.7 In addition it is recommended that the Code of Conduct includes a provision to ensure that members update their register of interests bi-monthly so that the need to orally declare the interest is removed. (*Recommendation 9*)

10. Disclosure of Prejudicial Interests & Withdrawal from the Meeting

- 10.1 Whilst regulations are awaited for the definition of Disclosable Prejudicial Interests (DPI), what is known about these interests from the Act is what happens when they are disclosed.
- 10.2 The duty to disclose and withdraw arises whenever a Councillor attends any meeting of the Council, a committee, sub-committee, Cabinet meeting or a panel meeting and is aware that he/she has a DPI. The DPI must be about any matter that is being considered as part of the meeting. If the DPI is registered or has been sent to the Monitoring Officer for registration, the Councillor does not need to orally disclose the DPI. However if a DPI is orally disclosed at the meeting, then the member has 28 days in which to ensure that the Monitoring Officer is duly notified of the DPI so that it can be added to the register of interests.
- 10.3 If a Councillor has a DPI in any matter the Councillor must not:
- 10.3.1 Take part in the discussion of the matter in the meeting. It is not clear whether this will include making representations at a meeting, as a member of the public might, or not at this time;
- 10.3.2 Take part in any vote in the matter in question.
- 10.4 Failure to comply with these requirements becomes a criminal offence and is not merely a breach of the Code of Conduct.
- 10.5 It is therefore recommended that in order to give clarity to Members that an addition be made to the ACSes draft Code of Conduct that where a member discloses a DPI, that they must withdraw from the meeting room, including from the public gallery, during the whole consideration of any item of business in which he/she has an interest, except where he/she is permitted to remain as a result of a grant of a dispensation. (*Recommendation 10*)

11. Dispensations

- 11.1 The current criteria for applying for a dispensation under the Local Government Act 2000 (as amended) are:
- 11.1.1 That at least 50% of the members of a decision making body have a prejudicial interest and;
- 11.1.1 That so many members of one political party have a prejudicial interest in the matter that it will upset the result of vote on the matter.
- 11.2 However, under the Act a dispensation can be granted on the following grounds:

- 11.2.1 That so many members of the decision making body have DPI's in a matter that it would "impede the transaction of the business". In other words the meeting that is considering the matter is likely to be inquorate;
 - 11.2.2 That, without the dispensation, the representation of the different political groups on the body transacting the business would be so upset so as to alter the outcome of any vote on the matter;
 - 11.2.3 That the authority considers that the dispensation would be in the interests of people living in the authority's area;
 - 11.2.4 That without dispensation, no member of the Cabinet would be able to participate in this matter.;
 - 11.2.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 11.3 Dispensations must be for a specified period of time and for a maximum of 4 years.
- 11.4 Previously only the full Standards Committee could consider and grant of a dispensation. Under the Act granting of dispensations could be delegated to a sub-committee or to the Monitoring Officer. It is therefore recommended that such a delegation be included in the amendments to the Constitution. Further regulations are expected in the matter of interests and dispensations.

12 Transition Arrangements and Conclusion

- 12.1 The present standards regime will continue to function as at present, considering, investigating and determining allegations of misconduct, until the end of June 2012. There will then be, it is suggested 2 months, to deal with outstanding complaints.
- 12.2 The right of appeal will not exist for those cases Standards Committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- 12.3 The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a Standards Committee could do, for instance, is to issue a Councillor with a censure or a request that they undergo training.
- 12.4 As can be seen by the length of this report, there are a lot of changes to the Standards regime. Following receipt of the regulations and before the implementation date of 1 July 2012, it is proposed that Members be briefed on the new arrangements. (*Recommendation 8*)