**Report to:** Cabinet **Date of Meeting:** 28th March 2012

**Subject:** Notice of Motion: Financial Malpractice

**Report of:** Director of Corporate Commissioning **Wards Affected:** All

**Is this a Key Decision?** No **Is it included in the Forward Plan?** No

**Exempt/Confidential** No

**Purpose/Summary**

At the Council meeting held on 22nd November, a motion moved by Councillor McKinlay on financial malpractice was referred to the Cabinet for consideration in accordance with Chapter 4, paragraph 84 (Motions on expenditure) of the Council's Constitution.

**Recommendation(s)**

That

(1) the work being undertaken within the Borough on financial inclusion be noted; and

(2) the Council's procurement processes be reviewed and reported to the Audit and Governance Committee at such time when the European Commission has finalised the procurement directives to include aspects of social value.

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

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

**Reasons for the Recommendation:**

To respond to a motion referred by the Council

**What will it cost and how will it be financed?**

**(A) Revenue Costs**
There are no costs incurred by this recommendation.

**(B) Capital Costs**
There are no costs incurred by this recommendation.

**Implications:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

| | | |
|---|---|---|
| **Legal** | | |
| **Human Resources** | | |
| **Equality** | | |
| 1. | No Equality Implication | x |
| 2. | Equality Implications identified and mitigated | |
| 3. | Equality Implication identified and risk remains | |

**Impact on Service Delivery:**
None at this time.

**What consultations have taken place on the proposals and when?**

The Head of Corporate Finance and ICT (FD2108/13) and Head of Corporate Legal Services (LD1424/13) have been consulted and have no comments on the report.

**Are there any other options available for consideration?**
The Cabinet is required to consider the content of the Motion.

**Implementation Date for the Decision**

Following the expiry of the “call-in” period for the Minutes of the Cabinet.

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**Background Papers:**

There are no background papers available for inspection.

## 1. Introduction/Background

1.1 At the Council meeting held on 22nd November 2012, the Council considered a motion moved by Councillor McKinlay and resolved as follows:

1.1.1. That in accordance with Rule 84 of the Council and Committee Procedure Rules (Motions on Expenditure), the following Motion be referred to the Cabinet for consideration of the financial implications in advance of any budgetary commitment and prior to any action being taken to implement the decision:

1.1.2. "Financial Malpractice:

This Council recognises that taxation is an investment that enables the public and private sectors ability to do business and that tax evasion and avoidance are dysfunctional for the workings of a healthy economy. We condemn unethical business practice such as tax evasion, tax avoidance through loopholes, the activities of the offshore secrecy industry and the international financial malpractice operated by multinational companies. These actions significantly contributed to the banking crisis and continue to siphon millions of pounds in flight capital out of the UK economy each day. We believe such activities are immoral and little more than economic crimes against the citizens of the UK, furthermore, they contribute to the growing wealth of the undeserving rich at the expense of and the impoverishment of middle and lower income working people. The UK deficit could be significantly reduced if such financial malpractice could be controlled, this fact exposes the Coalition governments ideologically driven weapon of choice 'austerity' as little more than a convenient smokescreen to embed economic liberalism and reduce the size of the state. We call on national and local government to act to stop immoral financial malpractice.

1.1.3. We call on the National Government to:

Seek international agreement on cross border taxation and the control of multinational transfer pricing and support the European Union's initiatives to introduce a financial transactions tax;

Re- introduce legislation on Usury to prevent the charging of excessive rates of interest;

Introduce effective regulation of the financial services sector, including democratic control of the offshore industry and the activities of the City of London Corporation; and

Introduce an effective General Anti-Abuse Rule to prevent tax evasion and dysfunctional tax avoidance.

1.1.4. Sefton Council will:

Enhance /reaffirm its commitment to ethical business practice to include a more robust approach to the assessment of ethical business practice as part of the local implementation of social value/procurement legislation."

1.2 This report deals with paragraph 1.1.4 as set out above. A letter has been sent to HM Treasury on the matters set out in paragraph 1.1.3 above.

**2.0 The Public Services (Social Value) Act 2012**

2.1 The Public Services (Social Value) Act 2012 applies to public services contracts (including those with an element of supply of goods or works) and encourages public bodies to "think socially" when they are procuring. When awarding contracts, the Act requires contracting authorities in England (and some in Wales) to look beyond the price and quality of the services to be provided, consider the social impact of the award of the contract and consider what the benefit is to the local area and community in terms of its economic, social and environmental well-being.

2.2 The Act does not provide any derogation from the basic procurement principles and it does not require or permit the award of contracts in favour of local suppliers where there is no objectively justifiable basis for doing so on the basis of the evaluation criteria and methodology in question. However, what it does do is bring to the forefront of public authorities' procurement processes the need to consider the outcome of a procurement holistically and not in isolation in terms of, for example, price alone.

2.3 Examples given in the guidance which accompanies the Act of where there can be additional scores available at evaluation stage include:

- a proposal for a mental health service to be provided by an organisation which actively employs people with a history of mental health problems to help deliver the service; thereby achieving an "added value" benefit to the community through access to work, social inclusion and a reduction in local unemployment;
- a contract between a housing Arms Length Management Organisation and a private sector repairs company requires them to provide greater social value by promoting careers in construction and trades to local schools, a commitment to targeting young people for employment and the long term unemployed – the social value comes from the creation of local jobs and raising the career aspirations of local pupils;
- a proposal for NHS consultation events to be run by a patient group. The group can use its profits to increase beneficial activities in the local community and is not required to distribute those profits to shareholders.

2.4 The Act suggests, but by no means expressly states, that it is within the gift of the public body to include higher scoring criteria for such social benefits. It is likely that this will only ever be justifiable where it is appropriate and directly linked to the subject matter of the contract.

2.5 It remains to be seen whether this will have any practical effect. It applies only to services contracts but does fit well with the Localism Act 2011 which contains provisions to encourage community participation in service provision where there are clear benefits to the public body for doing so.

2.6 When the new procurement directives are finalised by the European Commission there is likely to be wider scope to incorporate social and community benefits into procurement processes (in particular, selection and award criteria) and this is the first step to a regime which actively encourages these considerations.

**3.0 Financial inclusion in Sefton**

3.1 The Corporate Commissioning and Neighbourhood Coordination Department operate a Financial Inclusion sub-group which includes officers of the Council and partners from bodies such as, Citizens Advice Sefton and Arvato. This sub-group is part of the Council's wider Welfare Reform Group, which is looking at ways of mitigating the potential impacts of welfare reform.

3.2 Work undertaken so far by the Department includes a partnership event where the Council and its partners offered residents of the area free benefits checks, free employment advice, RSL advice and also advice from the Council if required and attendance at events to hand out information leaflets and give advice on illegal money lending and credit unions.

3.3 An event was held in February 2013 in partnership with the National Illegal Money Lending team. A theatre group provided three days of activities on the theme of illegal money lending to school children. Other activities and advice sessions also took place for the event which offered people some real support and advice if they were in any financial difficulties.

3.4 Finally, the Department has had discussions with Sefton Credit Union involving how the credit union may be able to offer short term crisis loans to people and how they could assist people to manage universal credit through good budgeting and responsible spending.

**4.0 Government Action on Payday loans**

4.1 The Office of Fair Trading (OFT) final report on payday sector compliance found evidence of problems throughout the lifecycle of payday loans, from advertising to debt collection, and across the sector, including by leading lenders that are members of established trade associations. Particular areas of non-compliance included:

- lenders failing to conduct adequate assessments of affordability before lending or before rolling over loans
- failing to explain adequately how payments will be collected
- using aggressive debt collection practices
- not treating borrowers in financial difficulty with forbearance

4.2 The OFT also uncovered evidence suggesting that the payday loans market is not working well in other respects and that irresponsible lending in the sector may have its roots in the way competition works.

4.3 The OFT believes that fundamental problems with the operation of the payday market go beyond non-compliance with the law and regulations. It believes that a full investigation by the Competition Commission is needed to identify lasting solutions to make this market serve its customers better.

4.4 As a result of the review, the fifty leading lenders, each of which was inspected, have been given 12 weeks to address the specific concerns the OFT identified with each of their businesses or risk losing their licence.

**5.0 Government Response**

5.1 The Government are concerned about the evidence and scale of consumer detriment identified in the Bristol Report and the evidence of widespread non-compliance by payday lenders identified in the OFT Report.

5.2 In response they plan to transfer the regulation of consumer credit from the OFT to the Financial Conduct Authority (FCA) from in April 2014. The transfer will, for the first time, bring conduct of business regulation under a single financial services regulator. This will end confusion for consumers, remove unnecessary duplication for many firms, and create a single strategic regulatory view across retail financial services. The FCA will have tough, responsive and dynamic powers to tackle emerging problems in credit markets quickly and effectively from April 2014.

5.3 The Parliamentary Under-Secretary of State for Business, Innovation and Skills also announced that:

- The OFT will clamp down now on irresponsible practices and in some cases blatant non-compliance by payday lenders;

- The OFT is consulting on a provisional decision to refer the payday lending market to the Competition Commission;

- The Government will begin immediate work with industry and regulators to clamp down on advertising of payday loans;

- The Government are strongly pressing for the industry to improve compliance with payday lending codes and to put in place new provisions within the codes in specific areas of concern, notably continuous payment authority; and

- The Financial Services Authority (FSA) has committed to prioritise action on payday lending as soon as it takes on the regulatory responsibility in April 2014. During the rest of this year, it will consider whether there are gaps in the regulation of payday lending that need to be addressed by the FCA from April 2014 and will turn existing OFT guidance into rules that are binding on firms.

- The Government have decided not to place a cap on the total cost of credit. They believe that a cap would not be the best solution now to the problems that have been identified by the Bristol report and the OFT payday compliance review. The Bristol report's findings indicate that such a cap could reduce access to credit, reduce the supply of credit and weaken competition. It could also lead lenders to shift more to charges which fall outside the cap and to optional fees which are generally less transparent to consumers. However, the Government recognise that a cap might be appropriate at some point in the future. This is why they have provided the FCA with specific powers to impose a cap on the cost and duration of credit, should they deem it appropriate once they take over the responsibility for consumer credit in April 2014.

- The Government has committed to further investment to March 2015 to support the credit union sector to provide financial services, including affordable credit, for up to one million more consumers on lower incomes in a way that will enable credit unions to modernise expand and become financially sustainable, and save low income consumers up to £1 billion in loan interest repayments by March 2019.