
Report to: Audit and Governance Committee **Date of Meeting:** 21 September 2016

Subject: Standards Regime in Sefton 2015/16 **Wards Affected:** All

Report of: Head of Regulation and Compliance

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

Purpose/Summary

To provide Members with information about complaints that Members have breached the Council's Member Code of Conduct in 2015/16.

Recommendation(s)

To note the contents of the report.

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 allow members to be aware of the number and type of complaints that Members have breached the Council's Member Code of Conduct in the municipal year 2015/16.

Alternative Options Considered and Rejected:

None

What will it cost and how will it be financed?

(A) Revenue Costs

(B) Capital Costs

Implications:

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

Financial	
Legal Localism Act 2011	
Human Resources	
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 of the Proposals on Service Delivery:

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT (FD4308/16.....) has been consulted and notes that there are no financial implications in the report

The Head of Regulation and Compliance is the author of the report (LD 3591/16)

Implementation Date for the Decision

Immediately following the Committee meeting.

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Background Papers:

There are no background papers available for inspection

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1. Introduction

- 1.1 On 25 May 2010, the coalition government announced its intention to abolish the Standards Board regime set out in Part 3 of the Local Government Act 2000 (LGA 2000). The government accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected members to office had the right to expect the highest standards of behaviour. However, it considered that the standards regime under the LGA 2000, under which all local authorities by law had to adopt a national code of conduct and a standards committee to oversee the behaviour of members and receive complaints, regulated by Standards for England, was ineffective, bureaucratic and encouraged petty complaints or harmful accusations. It therefore proposed that, through the Localism Act 2011, local authorities would draw up their own local codes of conduct and it would become a criminal offence for members to deliberately withhold or misrepresent a financial interest.
- 1.2 The Localism Act 2011 introduced fundamental changes to the regulation of standards of conduct for elected and co-opted members. It introduced:
 - A requirement to register pecuniary and other interests.
 - The creation of a new criminal offence of failing to register relevant interests.
- 1.3 Under section 27 of the Localism Act 2011, a relevant authority must promote and maintain high standards of conduct by its members and co-opted members.
- 1.4 When discharging its duty, a relevant authority must adopt a voluntary code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as members (that is in an official capacity). (There is therefore no requirement in relation to members' private lives although disqualification as a result of imprisonment for three months or more under section 80 of the Local Government Act 1972 remains.)
- 1.5 A parish council may (if it wishes to) adopt the code of its principal authority.
- 1.6 Section 28 provides that a local authority in England must ensure that its code of conduct includes appropriate provisions for registering, and disclosing:
 - Pecuniary interests.
 - Interests other than pecuniary interests.
- 1.7 Members are not required to give an undertaking to comply with their local authority's code of conduct and the previous consequence of not complying with that requirement, that is not being able to act as a member, has been removed.

1.8 However, section 28 requires a relevant authority to have arrangements in place to deal with complaints that its code of conduct has been breached, including arrangements for complaints to be investigated.

1.9 The Localism Act 2011 does not give a relevant authority any power to impose sanctions for breach of its code, such as:

- Disqualification from office, or
- Withdrawal of monetary allowances.

2. Dealing with a Compliant

2.1 Upon receipt of a complaint that a member has breached the code of conduct the complaint will be assessed by the Monitoring Officer against the legal jurisdiction test and if applicable, the local assessment criteria. If one or more of the local assessment criteria applies to the complaint, it is likely that no further action will be taken by the Monitoring officer and the complaint will be rejected. There is no right of appeal against the Monitoring officer's decision.

2.2 The Monitoring Officer may at any stage seek to resolve the complaint informally which is often the most cost-effective way of resolving the complaint and may be appropriate where:

- (a) the Subject Member appears to have a poor understanding of the Code of Conduct and/or related Council or Parish Council Procedures; or
- (b) there appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- (c) the conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) the conduct complained of appears common to a number of Members of the Council or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Council or Parish Council procedures etc; or
- (e) the conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) the complaint appears to reveal a lack of guidance, protocols and procedures within the Council or Parish Council; or
- (g) the Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) the complaint consists of allegations and retaliatory allegations between the parties; or
- (i) the complaint consists of allegations about how formal meetings are conducted; or
- (j) the conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

2.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors including the whole Council or Parish Council where it may be useful to address systematic behaviour:

- (a) training;
- (b) conciliation/mediation
- (c) mentoring;
- (d) apology
- (e) instituting changes to the Council's or Parish Council's procedures;
- (f) conflict management
- (g) changes to the Council's or Parish Council's protocols;
- (h) other remedial action by the Council or Parish Council;
- (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer.

2.4 If the Monitoring Officer considers that the complaint cannot be resolved informally, he/she will refer the complaint to the Initial Assessment Sub-Committee, who will determine whether to refer the complaint for investigation. If the Initial Assessment Sub-Committee decides not to refer a complaint for investigation or other appropriate action, the Complainant may request that the decision of the Initial Assessment Sub-Committee be reviewed and re-considered by the Review Sub-Committee. Any such requests must be made within 10 working days of the decision of the Initial Assessment Sub-Committee being notified to the Complainant. If the Initial Assessment Sub-Committee or Review Sub-Committee decide to refer a complaint for investigation, the Investigating Officer will investigate the complaint and will prepare a report for the consideration of the Hearings Sub-Committee.

2.5 If the complaint is referred to the Hearings Sub-Committee the Monitoring officer will appoint an Investigating Officer who is responsible for gathering all the facts, documents and where applicable, for interviewing witnesses. Upon completion their enquires the Monitoring officer will review the investigating officer's final report in consultation with the Independent Person.

2.6 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct they will inform the parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

2.7 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:

- (a) take no action; or

- (b) seek informal resolution; or
- (c) refer the matter for consideration by the Hearings Sub-Committee

2.8 Where the hearings Sub-Committee determines that the Subject member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied / recommended:

- (a) Reporting the findings to the Council or Parish Council for information;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of a Member who does not belong to such a Group, to the Council or Parish Council that they be removed from Committees or Sub-Committees of the Council;
- (c) Recommending to the Leader of the Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Recommending the arrangement of training for the Subject Member;
- (e) Recommending to the Cabinet to remove the Subject Member from all outside body appointments to which the Subject Member has been appointed or nominated to by the Cabinet or the Council as appropriate;
- (f) Depending upon the nature of the breach, one of the following may be appropriate – withdrawal of facilities such as use of Council email, equipment, etc. or exclusion of a Subject Member from Council offices except to attend meetings.

3. Complaints in 2015/16

3.1 In the Municipal year 2015 / 16 only two complaints were considered by the Initial Assessment Sub-Committee and no complaints proceeded to a Hearings Sub-Committee.

3.2 The first complaint concerned a Parish Council. One member made a complaint about two other fellow members. In order to fairly determine the course of action for the complaint at Initial Assessment Sub-Committee, the Sub-Committee was convened with two members of Audit and Governance and one parish councillor. The complaint concerned the general atmosphere of the parish council, along with allegations of bullying and disrespect inter alia.

3.3 Initial Assessment Sub-Committee determined that the complaint warranted 'other action'. The members elected for the matter to be referred to the Monitoring Officer to commence a mediatory process. Initial mediation sessions were undertaken with each member individually (the complainant and the subjects of the complaint). After organising mediation sessions and once an agenda had been devised, all members and the Monitoring Officer met collectively to discuss the future workings of the Parish Council. The work with the Parish Council is on-going.

- 3.4 The second complaint was made by an external contractor about a member. The complainant suggested that the member had been verbally abusive to the contractor's staff and abused their position as a councillor in order to try and enter a traffic management site. The councillor was made aware of the complaint and further clarification was sought by the Deputy Monitoring Officer. The councillor agreed that they had been at the junction referred to at the time of the complaint. They stated that they had asked the contractor why there were no signs at the beginning of the road to advise members of the public that further down the road was closed. The councillor denied ever being abusive and confirmed that they had their partner with them who could corroborate what had happened. The councillor also suggested that certain elements of the complaint were not true. The complaint progressed to Sub-Committee where it was determined that there would be no further action taken.
- 3.5 As per every complaint that proceeds to Initial Assessment Sub-Committee, the complainant is given written notification of the outcome of the Sub-Committee. Within this notification they are advised of their right to request a review of the decision. If they wish to exercise this right, the complainant must submit a written request within 14 days from the date of the notification letter explaining the grounds on which they consider the decision should be reviewed. A meeting of the Audit and Governance Review Sub-Committee is then convened comprising of different members to the Initial Assessment Sub-Committee.
- 3.6 The complainant contractor sought a review of the initial decision. As such, a Review Sub-Committee convened to consider the complaint. The Review Sub-Committee also decided that there should be no further action taken in relation to this complaint.

4. Liverpool City Region

- 4.1 The abolition of the statutory model code of conduct means that local authorities in England may have different codes so that:
- A councillor who is a member of more than one local authority is likely to be subject to different codes.
 - Different members of the same joint committee will be subject to the code of their different parent authorities.
- 4.2 The Liverpool City Region Combined Authority Scrutiny Panel have asked that a piece of work be undertaken to review all Member Codes of Conduct within the constituent authorities to see how the Nolan principles of public life are embedded in the codes and how consistent the codes are with each other, for example, the manner in which non-pecuniary interests are defined and treated varies amongst the constituent authorities.

- 4.3 The review will also consider how each constituent authority deals with issues such as Code of Ethics for Internal Auditors and policies on gifts and hospitality and declarations of interest at committee meetings.
- 4.4 The work is being led by the Head of Internal Audit at Merseytravel and is anticipated that a report will be submitted to the LCR Combined Authority Scrutiny Panel on 19 October 2016. The report will be considered by our Monitoring Officer and if it has implications for Sefton, a report will be prepared for this committee.