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| Agenda Item No: | 15 |  |
| Committee: | COUNCIL | |
| Date: | 26th February 2015 | |
| Report Title: | Amendments to the Council's Constitution – Member Conduct | |

Cover sheet:

1 Purpose / Summary

To approve recommendations from the Conduct Committee related to the initial consideration of member conduct complaints, reflecting on current practice and comments from recent cases and endorse those Constitutional changes necessary to give effect to those recommendations.


2 Key issues

- Under the requirements of the Localism Act 2011 all written complaints in relation to member conduct must be determined. This determination cannot be as an executive function.
- At present all complaints which have not been informally resolved are reported in public to the Conduct Committee for their initial assessment. This includes any complaints which may be vexatious, trivial or tit for tat and potentially this may be seen to encourage such complaints.
- The Conduct Committee met on the 12th February 2015 and endorsed the approach suggested in a report "Handling of Initial Complaints" and commended it to Council.

3 Recommendations

- That the Council endorses the recommendations of Conduct Committee to amend the process for the handling of initial complaints in relation to member conduct
- That the Council authorises the Monitoring Officer to make those amendments suggested in Appendix A of the Report to Conduct Committee annexed to this report to the Constitution.

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| Wards Affected | All |
| Forward Plan Reference | N/A |
| Portfolio Holder(s) | Councillor John Clark, Leader of the Council |
| Report Originator(s) | Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Deputy Monitoring Officer |
| Contact Officer(s) | Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Deputy Monitoring Officer |
| Background Paper(s) | Report to Conduct Committee – “Handling of Initial Complaints” from 12th February 2015, Localism Act 2011 and the Constitution |

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| Agenda Item No: | 6 |  |
| Committee: | Conduct Committee | |
| Date: | 12 February 2015 | |
| Report Title: | Handling of Initial Complaints | |

Cover sheet:

1 Purpose / Summary

- To consider the appropriate methodology for the initial consideration of member conduct complaints, reflecting on current practice and comments from recent cases.

2 Key issues

- Under the requirements of the Localism Act 2011 all written complaints in relation to member conduct must be determined. This determination cannot be as an executive function.
- At present all complaints which have not been informally resolved are reported in public to the Conduct Committee for their initial assessment. This includes any complaints which may be vexatious, trivial or tit for tat and potentially this may be seen to encourage such complaints.
- As requested by the Committee and being aware of practice now established in Authorities elsewhere, the Committee is asked to

consider whether they wish to amend the current initial assessment process.

3 Recommendations

- To consider whether a change to the current process is required.
- If a change is considered appropriate to endorse the changes to the current process set out in this paper.
- To recommend the changes to Council to allow the appropriate constitutional updates to be made.

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| Wards Affected | All |
| Forward Plan Reference | N/A |
| Portfolio Holder(s) | Councillor Hoy, Chairman of Conduct Committee |
| Report Originator(s) | Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Senior Solicitor and Deputy Monitoring Officer |
| Contact Officer(s) | Carol Pilson, Corporate Director and Monitoring Officer Tom Lewis, Senior Solicitor and Deputy Monitoring Officer |
| Background Paper(s) | Localism Act 2011 |

1 Background / introduction

- 1.1 Following the introduction of the Localism Act 2011 the Council was required to introduce a new process in line with the requirements of the Act for managing member conduct matters.
- 1.2 Under the current arrangements adopted by the Council once a complaint is received the Monitoring Officer will in the first instance seek an informal resolution. If this is not achieved the complaint is referred to committee for an initial consideration of its merits.
- 1.3 The Committee has the option to either reject the complaint, to seek further informal resolution, or alternatively refer the matter for full investigation. The meeting to consider this is undertaken in public and with papers published in advance.
- 1.4 The Committee has previously considered a change to the current approach (at a Conduct Committee meeting in June 2013) but at the time considered that no change was necessary. However, at the July 2014 Conduct Committee meeting officers were asked to once again bring forward a report to allow consideration be given to an additional step in the Conduct process.

2 Review of Conduct Committee Process

- 2.1 Having undertaken a number of assessments and being aware of practice now established in Authorities elsewhere, the Committee is asked to consider, in line with their direction, whether they wish to amend the current initial assessment process.
- 2.2 The purpose of such an amendment would be to ensure only those complaints that were deemed to have potentially breached the Code of Conduct would go forward to a full committee assessment, and not those complaints which could be deemed vexatious, trivial or tit-for tat.
- 2.3 There are two principal options:
 - To continue with the current arrangements
 - To alter Conduct Committee procedure rule 5.3.6 of the Council's constitution to enable the initial consideration of all formal complaints by the Chairman, Independent Person and Deputy Independent Person, with advice from the Monitoring Officer. Any case where it is considered that a breach in the Code of Conduct may have occurred would be referred on to the Conduct Committee for further consideration. Complaints deemed vexatious, trivial or tit for tat could be dismissed at this stage without referral to Committee.
- 2.4 In the event that any complaint was rejected notification of this rejection would be circulated to all members of the Committee by email and no further consideration would be given to that complaint.
- 2.5 If any of the group were to consider themselves unable to make a determination the view of the remaining two would be sufficient.

- 2.6 Adopting option 2 would require a change to the Council's Constitution and agreement of Council. A proposed updated section of the constitution is included at Appendix A.

3 Considerations

- 3.1 Members are asked to consider the options and determine whether to remain with the current approach or to propose the alternative outlined for Council endorsement.

Appendix A – Proposed Constitutional Changes shown in *Italics*

Rule 9 Conduct Committee Procedures¹

1 Introduction

- 1.1 These procedures govern the working practices of the Conduct Committee when considering conduct matters of Councillors of both Fenland District Council and the Town and Parish Councils within the Fenland Area.
- 1.2 The Conduct Committee performs the functions set out in Part 1 Chapter 7 of the Localism Act 2011.
- 1.3 Members of Fenland District Council are obliged to follow the Code of Conduct detailed in Part 5 of the Councils Constitution. Each Town or Parish Council is required to adopt their own Code of Conduct and copies can be obtained either from their own websites or the Town or Parish Clerk.

2 Definitions

- 2.1 The following definitions apply to this Procedure:

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| Pecuniary Interests | Shall be a “Disclosable Pecuniary Interest” as defined in The Revelant Authorities (Disclosable Pecuniary Interests) Regulations 2012. |
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3 Conduct Committee

- 3.1 The Conduct Committee is comprised of 5 members of Fenland District Council, all members have equal speaking and voting rights.
- 3.2 The Committee is joined by 2 members selected from Town and Parish Councils, they are co-opted on to the committee by the committee. These members are invited to speak and take part in the debate but do not have a right to vote.
- 3.3 The Committee is advised by an Independent Person or their deputy. They are appointed by the Council on an annual basis, prior to their first appointment this will be following an open advert. The Independent Person shall be appointed in line with the requirements of the Localism Act 2011.

¹ Revised scheme approved 26th July 2012

- 3.4 The Independent Person does not sit on the committee and does not have a right to join the debate or vote. However when exercising their functions the Committee must have regard to the advice of the Independent Person.
- 3.5 The Committee is governed by the Quorum rules set out in standing order 7. However Town and Parish Members and the Independent Person do not count for the purposes of establishing Quorum.

4 Functions of the Conduct Committee

- 4.1 The Conduct Committee is primarily charged with monitoring and managing the Councils responsibilities under Chapter 7 of Part 1 of the Localism Act 2011, in respect of Member Standards.
- 4.2 The Committee Shall:
- Monitor the Code of Conduct and make recommendations to Full Council where it considers that changes are required.
 - Provide guidance to Members on the Code of Conduct
 - Determine Complaints made against members under the Code of Conduct *save where the Independent Person, Deputy Independent Person and Chairman of Committee, advised by the Monitoring Officer, shall dismiss as a complaint as subsequently set out at 5.3.6 and 5.3.7.*
 - Monitor the Register of Members Interests and report to Full Council if any changes are required as to its contents.
 - Determine requests for dispensations

5 Complaints

- 5.1 Fenland District Council is the responsible authority for receiving and determining complaints against Councillor Conduct for both District Councillors, and the Town and Parish Councillors within the District.

5.2 Receipt of Complaints

- All complaints about Councillor Conduct should be forwarded to the Monitoring Officer at Fenland Hall, County Road, March, Cambridgeshire, PE15 8NQ, or by email on monitoringofficer@fenland.gov.uk.
- All complaints will be acknowledged in writing, where the complaint is unclear or does not relate to a serving Councillor under the jurisdiction of the Conduct Committee then the complaint will be declined by the Monitoring Officer.

- Where the Complaint relates to a failure to act appropriately in respect of a Pecuniary Interest, this may be a criminal offence under the terms of section 34 of the Localism Act 2011.
- If the Complaint relates to a failure to register an interest and the Monitoring Officer is in a position to confirm that the interest is registered they will do this. Otherwise the matter will be referred to Cambridgeshire Constabulary in the first instance as they have appropriate jurisdiction. The Complainant will be informed of the referral.
- In all other cases the Monitoring Officer will contact the subject member giving them 7 days to make an initial response to the complaint. In order to establish what if any facts are agreed and whether or not the Member accepts the Complaint.

5.3 Informal Resolution of Complaints

- Where the Member accepts the complaint the Monitoring Officer will assess whether or not an informal resolution can be achieved between the Member and the Complainant. If informal resolution can be achieved then the complaint will not proceed further.

5.4 Initial Consideration of Complaints

- The Conduct Committee will having reviewed the Members initial response to the complaint or after the expiry of the 7 day period assess the complaint and determine whether or not there is a reasonable prospect of the complaint being proven based on the information held.
- If it is determined that the complaint may disclose a breach of the Code of Conduct if proven additionally the following criteria will be assessed to determine whether or not the complaint merits investigation:
 - Has the Complaint already been investigated, or is it already the subject of investigation?
 - Is the Complaint more appropriately dealt with through another regulatory channel?
 - Is the complaint about something which happened so long ago that there would be little benefit in taking action now?
 - Is the complaint too trivial to warrant further action?
 - Does the compliant appear to be malicious or simply tit for tat?
 - Where it is considered that the complaint does not merit investigation then the decision will be reported to the Member and the Complainant.
- *Prior to any consideration by Conduct Committee all written complaints will first be the subject of a pre-screening process by the Independent Person, the Deputy Independent Person and*

Chairman of Committee with advice from the Monitoring Officer (although the Monitoring Officer would not take part in any determination as to whether a complaint can be dismissed without referral to Committee).

- *Any complaint where it is considered that a breach of the Code of Conduct may have occurred, unless it is deemed vexatious, trivial or tit for tat will be referred on to Committee for further consideration. In the event that it is the unanimous view of the Independent Person, Deputy Independent Person and Chairman of Committee that there has been no breach of the Code of Conduct and that a complaint does not warrant consideration by Committee then it may be dismissed. In the event that any participant felt unable to make a determination the view of the two remaining members would suffice. In such circumstances all members of the Committee will be notified. It should be made clear that in the event of such a determination there would be no further consideration given to that complaint.*

5.5 Investigation of Complaints

- Where a matter is considered suitable for investigation it will be for the Monitoring Officer in consultation with the Chairman of the Conduct Committee and the Independent Person to determine the level of investigation required and the scope of the investigation.
- All investigations will need to satisfy the following outcomes:
 - a) Proportionate
 - b) Timely
 - c) Conducted in accordance with accepted investigation protocols,
 - d) Obtain relevant documents to establish background
 - e) Give the complaint and the Member the right to put their case and respond to the information found.
- In the event of a material change of circumstances the Monitoring Officer in consultation with the Chairman of the Conduct Committee may terminate the investigation and report this to the Conduct Committee. Examples of when this may be appropriate are as follows:
 - a) Compelling evidence is found showing the Member did not breach the Code of Conduct,
 - b) The Member has resigned (or not been re-elected) from the relevant Council, Town or Parish Council,
 - c) The Member is seriously ill, or
 - d) The Member has died.

- The Investigating Officer will be expected to give their view of the evidence and whether or not a breach of the Code of Conduct has occurred.
- Once an investigation report is received by the Monitoring Officer they will assess the report and consider if it meets the above criteria. If the Monitoring Officer does not consider that this has been met they will ask the Investigating Officer to undertake further work or report the reason for their failure to conclude a full report.
- Consideration of the Investigation Report
- Where in the view of the Investigating Officer the Member has not breached the Code of Conduct then the Investigating Officers Report will be taken to the Conduct Committee for their notification.
- In the event that the Investigating Officer believes there to be a breach of the Code of Conduct or where they have not been in a position to satisfy the tests in the matter will be referred to the Conduct Committee for a Hearing.
- **Hearing Procedure**
- Prior to the hearing the Monitoring Officer will contact the Member and any relevant witnesses in order to arrange a date at a date and time which will enable attendance by all relevant parties.
- If the Councillor is not present at the start of the hearing the Chairman shall ask the Monitoring Officer whether the Councillor or the Councillor's Representative has indicated their intention not to attend the hearing.
- If the Councillor has indicated that they do not intend to be present the Conduct Committee shall consider if it is able to continue to hear the matter in their absence. The Committee shall have regard to the following factors:
 - a) Any reasons provided by the Councillor
 - b) Any representative or written representations present from the Councillor
 - c) The views of the Councillor as to whether the hearing should proceed
 - d) Any comments from the Monitoring Officer
- If the Committee are satisfied that the hearing can proceed in the absence of the Councillor without being unreasonable then the hearing can proceed, however if this is not the case then the hearing should be adjourned to a later date.
- A Member will be entitled to have a representative attend the hearing with them. This representative may be a solicitor or barrister, however no costs will be recoverable from Fenland District Council for any representative in attendance.

- The Committee will hear the Investigating Officers report and any witnesses first, and the Member or their representative may ask any relevant questions of the Investigating Officer or their witnesses.
- The Member will then have an opportunity to present their case including any witnesses, the Investigating Officer will have the right to question the Member or their witnesses.
- At the conclusion of each sides case the Investigating Officer and then the Member will be given an opportunity to present a summary of their position to the Committee.
- The Independent Person will be invited to provide their view of the Facts as presented and whether or not these represent a breach of the Code of Conduct.
- Although no formal time limits will be imposed on the presentations the Chairman will have the right to curtail excessive presentations.
- The Committee will then determine whether or not there has been a breach of the Code of Conduct and if appropriate what sanction to be imposed.
- The Committee shall have the right to impose the following sanctions (either individually or in combination):
 - a) Formal Letter of reprimand,
 - b) Motion of censure at the Conduct Committee,
 - c) Recommendation to Full Council (or the Town or Parish Council) for a motion of Censure,
 - d) Formal request to the Members Group Leader for their removal from Committee(s),
 - e) Offer additional training for the member
 - f) Withdraw facilities (or recommend to the Town or Parish Council) that facilities such as computers, email, or internet access be suspended for a period of time.
 - g) Exclude (or recommend to the Town or Parish Council) the Member from the Council's offices or other premises or restrict access to certain officers; excepting access as necessary for the attendance at meetings of the Council, Committees or Sub-Committees.
 - h) Publication of formal notification of breach in a newspaper circulating in the area.
- At the end of the hearing the Member and the Complainant and any relevant Town or Parish Council will receive written notification of the Conduct Committees determination.

6 Appeals

- 6.1 There are no direct rights of appeal against the decisions of the Monitoring Officer or the Conduct Committee. If your complaint has not been handled in what you consider to be a satisfactory way you are entitled to raise the issue with the Local Government Ombudsman.

7 Dispensations

- 7.1 The Conduct Committee shall have the right to determine all applications for Dispensations in respect of Pecuniary Interests
- 7.2 A member wishing to receive a dispensation may write to the Monitoring Officer setting out the basis for their Pecuniary Interest and the grounds upon which the dispensation is sought
- 7.3 Dispensations may be granted if the Conduct Committee considers that any of the following grounds are met:
- a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business (be that the Council, Cabinet, or any Committee) as to impede the transaction of the business,
 - b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - c) considers that granting the dispensation is in the interests of persons living in the authority's area, or
 - d) considers that it is otherwise appropriate to grant a dispensation
- 7.4 A Dispensation may last for such a period as defined in the decision; but in any event for no longer than four years.

Summary of Complaint Process

