

Agenda Item No:	9	
Committee:	Conduct Committee	
Date:	3rd July 2019	
Report Title:	Local Government Ethical Standards	

1. Purpose / Summary

The purpose of this Report is to bring to Members' attention the publication of a report by the Committee on Standards in Public Life and the associated impact/recommendations arising for Fenland District Council.

2. Key issues

On 30th January 2019, the Committee on Standards in Public Life published the outcome of its Review on Local Government Ethical Standards and its contents has been analysed as against the existing arrangements at Fenland District Council to identify areas where improvements can continue to be made.

3. Recommendations

It is recommended that the Conduct Committee notes the recommendations contained within the Committee on Standards in Public Life ("CSPL") report on Local Government Ethical Standards and considers its impact in determining the other items on the agenda.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	
Report Originator(s)	Carol Pilson, Monitoring Officer Amy Brown, Deputy Monitoring Officer
Contact Officer(s)	Carol Pilson, Monitoring Officer
Background Paper(s)	Standards in Public Life Review: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF . Analysis of Fenland District Council's existing practices as against the recommendations of the Standards in Public Life Review (Appendix 1).

1. BACKGROUND/INTRODUCTION

- 1.1. The Committee on Standards in Public Life wrote to the Prime Minister in January 2018 to inform the Government that the Committee was to undertake a review of local government standards.
- 1.2. As part of this review, the Committee held a public stakeholder consultation and has looked at the conduct and culture in local government, both at principal authority level and in town and parish councils. The consultation closed on Friday 18 May 2018 and the Committee's report was published on 31st January 2019, see link on page 1.
- 1.3. Following publication arrangements were made to consider the extent to which Fenland District Council's existing practices and procedures could be enhanced to incorporate all relevant best practice requirements. The completed analysis is at Appendix 1.

2. REPORT FINDINGS AND IMPLICATIONS FOR FENLAND DISTRICT COUNCIL

- 2.1. The report findings indicate that the majority of councillors and officers maintain high standards of conduct and that the arrangements for local management of these matters should continue but need to be supported by robust safeguards and adequate resource. Nevertheless, it was identified that there is clear evidence of misconduct by some and mostly manifests in bullying, harassment or other disruptive behaviour. Furthermore, observations have been made about the suitability of the current rules governing declaring interests, gifts and hospitality and the availability of appropriate sanctions when breaches have occurred.
- 2.2. In recognition its findings, the Committee has identified various points of best practice and made specific recommendations for improvement. Appendix 1 sets out each of the key recommendations and identifies the areas where changes are most likely to be required in the context of Fenland District Council's existing arrangements. Where immediate changes can be considered these have been highlighted in italics.
- 2.3. It is recognised that many of the recommendations will require primary legislation to change parts of the Localism Act 2011 and will therefore be subject to parliamentary timetabling. Nevertheless, it is open to Councils to adopt the many best practice points with immediate effect and the Committee has indicated their intention to review implementation in 2020.

3. CONCLUSION

This Report is submitted for consideration by the Conduct Committee as part of its role in overseeing compliance with the Members' Code of Conduct and in promoting high standards of conduct by Members. Members of the Conduct Committee are invited to note the contents of the Report and the subsequent analysis of Fenland District Council's current arrangements as against the recommended practices. Work has already commenced where areas for enhancement have been identified and these comprise other items on the agenda for consideration by the Conduct Committee.

Appendix 1 - Summary of Recommendations and Best Practice Requirements

Committee Report	Current Practice	Next Steps
Recommendations set out at pages 14 - 17 of the Commission's Report		
R1 Model Code	FDC has a Member Code of Conduct devised from the previous model code.	Await opportunity to input on the Local Government Association's consultation on proposed changes to the existing model code and consider what revisions are required thereafter.
R2 Registration of Home Address	Where a Councillor considers (and the MO agrees), the the nature of a DPI or other interest is such that disclosure of the details of the interest could lead to the Councillor or a person connected with them being subject to intimidation or violence, it is a "sensitive interest" and the details of the sensitive interest do not need to be included in the register or disclosed to a meeting, although the fact that a sensitive interest exists must be disclosed.	Await amendments to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 confirming that a Councillor does not need to register their home address on an authority's register of interests.
R3 Presumption of acting in official capacity in relation to public conduct/social media.	During the pre-sift the Monitoring Officer, Chair and IPs will always consider whether the allegations relate to actions occurring whilst the subject member was acting in their official capacity.	Await amendments to section 27(2) of the Localism Act 2011 permitting local authorities to presume that a Councillor is acting in their official capacity when deciding upon breaches relating to their public conduct to include statements on publicly accessible social media. <i>In the meantime, FDC is recommended to adopt guidance relating to the use of social media with associated training.</i>
R4. Application of code when acting/claiming to act in official capacity or representative of PCC.	As above.	Await amendments to Section 27(2) of the Localism Act 2011 confirming that the code of conduct applies to a Councillor when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.
R5. Disclosable Pecuniary Interests.	Currently an interest will only amount to a DPI if it relates to any employment, office, trade, profession or vocation carried on for profit or gain.	Await amendments to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 to include:the following as DPIs; unpaid directorships; trusteeships; management roles in a charity or a body of

		a public nature; and membership of any organisations that seek to influence opinion or public policy. <i>In the meantime the Monitoring Officer is recommended to issue Guidance for Members and Officers who Serve on Outside Bodies.</i>
R6. Gifts & Hospitality	FDC's Code of Conduct already makes provision for the Monitoring Officer to maintain a Register of interests.	Await the updated model code of conduct and consider what if any changes are required and any associated policy requirements.
R7. Non-Statutory Interests	To reflect common law requirements, Fenland District Council's Code of conduct already includes a section on 'other interests' however there is no specific instruction as to when, in those circumstances a Councillor is permitted to remain in the room and/or participate in the debate/vote. There is a presumption in favour of the member leaving the room but there is room for development within the existing arrangements.	Await amendments to Section 31 of the Localism Act 2011 and consider this against the existing requirements of PCC's Code. <i>Meanwhile MO to consider what if any changes to the current definition of 'other interests' is required to strengthen governance and understanding of the common law position.</i>
R8. Appointment of Independent Persons.	There is currently no limit on the term of office of the Independent Person.	Await amendments to the Localism Act 2011 to require that Independent Persons are appointed for a fixed term of two years, renewable once.
R9. Recording the view of the Independent Person.	The Independent Person has a specific role to play within the context of a Conduct Hearing which is then captured in the minute and Decision Notice.	Await updates to the Local Government Transparency Code and consider this against existing requirements. <i>Currently the IP's views are only recorded whether there is a conduct hearing. MO to develop a decision notice for use at the initial assessment stage so as to ensure the required level of transparency throughout the process. The decision notice to be published on a redeveloped 'Conduct' page on the Council's website.</i>
R10. Requirements relating to suspension.	Currently suspension is not a sanction available to the Conduct Committee.	Await confirmation of reintroduction of suspension as a sanction and revise the Conduct Procedure Rules accordingly.
R11. Indemnity for Independent Persons.	Currently there are no specific indemnities for the Independent Person.	<i>The Monitoring Officer should consider what if any indemnities can be provided to the Independent Person under current legislation.</i>
R12. Voting Rights.	Currently whilst the Independent Person is able to attend and	Await legislating permitting the Independent Person and

	<p>Parish/Town Council representatives to have the same rights as members of the Hearing Panel to vote and impose sanctions.</p>	<p>Parish/Town Council representatives to have the same rights as members of the Hearing Panel to vote and impose sanctions.</p>
R13. Right of Appeal.	<p>There is currently no right of appeal in relation to the decision of the Hearings Panel and the Local Government Ombudsman will only involve itself in complaints relating to member conduct in exceptional circumstances.</p>	<p>Await confirmation of the requirement to introduce a right of appeal for a Councillor who is sanctioned with suspension.</p>
R14. Local Government Ombudsman.	<p>As above.</p>	<p>Await confirm of the Local Government Ombudsman's role in responding to appeals (as above).</p>
R15 Publication of Conduct Complaints.	<p>Currently only decisions reached following a hearing of the Conduct Committee are published on the Council's webpage.</p>	<p>Await amendments to the Local Government Transparency Code and consider this against existing practices. <i>As above, MO to develop a decision notice which should be used from the pre-sift stage with outcomes being published on the Council's website. MO to also consider how this information should be reported/summarised to members of the conduct committee.</i></p>
R16 Suspension.	<p>Currently suspension is not a sanction available to the Hearing Panel (Sub-Committee of the Constitution and Ethics Committee).</p>	<p>Await confirmation of proposals relating to the reintroduction of suspension as a sanction and amend the Hearing Procedure as appropriate.</p>
R17 Other Sanctions	<p>It is generally accepted that permissible sanctions include the withdrawal of council facilities and/or barring entry to Council premises where the circumstances of the breach dictate that this is a necessary and proportionate response however there is no legislative basis for this.</p>	<p>Await confirmation/clarification of the sanctions available to the Hearings Panel and amend the Hearing Procedure as appropriate.</p>
R18 Criminal Offences	<p>Failing to comply with statutory requirements relating to the disclosure of disclosable pecuniary interests is currently a criminal offence.</p>	<p>Await amendments to the Localism Act 2011 and amend the Code of Conduct as appropriate.</p>
R19 - Parish Clerks	<p>There is currently a degree of variability in terms of the</p>	<p><i>Monitoring Officer to host training sessions with Parish</i></p>

	qualifications held.	clerks.
R20 - Parish Council Codes of Conduct	It is estimated that the majority of Parish Council's adopt FDC's Code.	Await amendments to section 27(3) of the Localism Act 2011 stating that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. <i>In the interim Monitoring Officer to undertake an audit as to which of the Parish Councils are currently utilising FDC's Code and consider ongoing engagement with Parishes to achieve a cohesive approach where possible. This also to include an audit of the registers of interests and the timescales within which these are being published online.</i>
R21 - Sanctioning Parish Councillors	The Conduct Committee currently determines sanctions for Parish Councillors in the event of a breach of the Code having been established.	Await amendments to section 28(11) of the Localism Act 2011 to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority and consider against existing provisions.
R22 - Disciplinary Protection	The Council currently abides by the 2015 Regulations as well as nationally negotiated terms and conditions.	Await amendments to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and ensure that this is appropriately recorded in the Officer Employment Rules.
R23 - Whistleblowing Policy	The Council has a Whistle Blowing Policy which specifies the steps that staff and/or members of the public can take if they wish to raise a concern.	Await amendments to the Local Government Transparency Code requiring that the Council's whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website. <i>In the interim, Monitoring Officer to review the existing arrangements for publishing the Council's Whistle Blowing Policy and the procedure that must be followed to include the inclusion of a named contact.</i>

R24 - Prescribed Persons	Currently councillors are not listed as 'prescribed persons' within the Act.	Await amendments to the Public Interest Disclosure Act 1998 to include Councillors as 'prescribed persons' within the list.
R25 - Induction Training	FDC currently provides induction and refresher training as appropriate. There is however no means of compelling attendance save in respect of certain Committees where training is a prescribed requirement.	Await changes to national model group rules and support from political groups in respect of the recommendation that Councillors should be required to attend formal induction training.
R26 - Peer Reviews	FDC currently seeks opportunities to review best practice amongst peers via its participation in a Monitoring Officer Group for the region.	Await changes to the scope of the Local Government Association's corporate peer reviews to include consideration of a local authority's processes for maintaining ethical standards.
Best Practice Proposals at Pages 18 - 19 of the Commission's Report		
BP1 - Prohibition on bullying and harassment to include a definition and examples.	The Members' Code is sufficiently widely drafted to include all forms of unacceptable behaviour however there is nothing explicit with regard to bullying and harassment.	<i>Monitoring Officer to review and propose amendments to the Code of Conduct/Procedure Rules as required.</i>
BP2 Code to specify that Councillors must comply with investigations and to prohibit trivial/malicious allegations between Councillors.	FDC's conduct procedure rules permit the pre-sift to reject a complaint if it is considered to be politically trivial, vexatious or tit for tat. There is no specific requirement for Councillors to comply with the Hearings Procedure or Guidance for Submitting a Complaint however it is an expectation that they do so both in general compliance with the Code and so as not to prejudice their case.	<i>Monitoring Officer to review and propose amendments to the Code of Conduct/Procedure Rules as required.</i>
BP3 Reviewing the Code and public/partner engagement.	Currently there is no requirement to review the Code however any significant changes would be appropriately consulted on.	<i>Monitoring Officer to review and propose amendments to the Code of Conduct/Procedure Rules as required.</i>
BP4 Accessibility	All of the documentation relating to the Code of Conduct and management of alleged breaches can be found on the Council's	<i>Monitoring Officer to review the Council's website to consider the development of a single page where all</i>

	website together with information relating to the Conduct Committee.	<i>information relating to complaints and meetings of the Conduct Committee is accessible together with published decision notices, guidance on making a complaint and the code of conduct and hearing procedure etc.</i>
BP5 Gifts & Hospitality	FDC maintains and gifts and hospitality register however it is not currently published.	<i>Monitoring Officer to review the register of gifts and hospitality to ensure that it is being kept up-to-date and adequately publicised and to consider any communications that may be required to ensure ongoing compliance.</i>
BP6 Public Interests Test	FDC's conduct procedure rules set out the criteria against which complaints will be considered and the basis upon which they will be rejected to take into account factors such as delay and overall seriousness as well as the possibility of an alternative resolution.	<i>Monitoring Officer to review and propose amendments to the Code of Conduct/Procedure Rules as required.</i>
BP7 - Independent Persons	FDC currently has 1 Independent Person with a further appointment to be made at Council on 18 July.	<i>Monitoring Officer to proceed with identification of 2nd IP and consider pooling resources across the county in ongoing discussions at the Monitoring Officer Group meeting.</i>
BP8 - IP's Involvement in Initial Assessment of Complaint.	FDC's conduct procedure rules provide that the IPs and the Chairman/Vice-Chairman make the decision as part of the pre-sift as to whether or not there may have been a breach of the Code. The Conduct Committee then make the decision with input from the IP as to whether or not an investigation is warranted.	<i>Monitoring Officer to review and propose amendments to the Code of Conduct/Procedure Rules as required.</i>
BP9 - Publication of Decision Notices.	FDC currently only publishes the findings of the Conduct Committee following a hearing.	<i>Monitoring Officer to review the existing arrangements and develop a Decision Notice for publication in future. This to also be considered with any associated amendments to the Code/Procedure Rule surrounding confidentiality.</i>
BP10 - Guidance on Making a Complaint	FDC does not publish specific guidance on making a complaint but the requirements/process are outlined in the Code of Conduct	<i>Monitoring Officer to draft a guidance document together with a complaint referral form for publication on the</i>

	and Procedure Rules.	<i>webpage.</i>
BP11 - Complaints by Parish Clerks.	There are currently no provisions for this within FDC's existing processes.	<i>Monitoring Officer to continue to liaise with Parish Councils in relation to the development of the Code and associated documentation, in highlighting the Commission's recommendations and in assessing and training requirements.</i>
BP12 - Role of the MO in relation to Parish Councils.	The Monitoring Officer fulfils the same role in respect of Parish complaints as for complaints against District Councillors.	<i>Monitoring Officer to continue to liaise with Parish Councils in relation to the development of the Code and associated documentation, in highlighting the Commission's recommendations and in assessing and training requirements.</i>
BP13 - Conflicts of Interest.	The Monitoring Officer has nominated deputies who are able to assist in circumstances where a conflict arises as well as participating in a Monitoring Officer Group for the region through which the opportunities for resilience can continue to be explored.	<i>Monitoring Officer to ensure that appropriate arrangements are in place for dealing with a complaint where a conflict of interest arises.</i>
BP14 - Outside Bodies.	Cabinet have oversight of the Outside Bodies appointment process.	Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.
BP15 - Member Engagement.	It is recognised that member engagement is important to the development of and compliance with appropriate procedures for managing breaches of the Code.	<i>Monitoring Officer to review existing arrangements with the Conduct Committee in order to consider what if any further arrangements for engagement can be put in place to include the development of a work plan for quarterly meetings.</i>