

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting:	1 June 2017
Report of:	Acting Director of Legal Services
Subject/Title:	Notice of Motion – Membership of Freemasons
Portfolio Holder:	Councillor Rachel Bailey – Leader of the Council

1.0 Report Summary

- 1.1 The purpose of this report is to consider and respond to the following motion which had been proposed by Councillor S Corcoran and seconded by Councillor N Mannion at the Council meeting on 15 December 2016 and referred to Cabinet for consideration:

“Council agrees that all Cheshire East Elected Members should be required to declare membership of the Freemasons”.

2.0 Recommendations

- 2.1 That Audit and Governance Committee notes that a review is being undertaken of the Constitution including the Member and Officer Codes of Conduct. Any proposals to change the requirements for declarations of interests to be made by Members and Officers will be reported and determined through that review process.
- 2.2 For that reason, it is recommended that Audit and Governance Committee endorse that any consideration of classifying membership of the Freemasons as a interest that is required to be declared be undertaken as part of the wider ongoing review.

3.0 Reasons for Recommendations

- 3.1 The Council’s Code of Conduct sets out general obligations about the standards of conduct expected of Members, together with provisions about registering and declaring pecuniary and non-pecuniary interests.

The Code has been adopted under section 27 of the Localism Act 2011 and is based on The Nolan Principles of public life (which are set out as general obligations in the Part A of the Code - see in Appendix 1). Members must have regard to those principles when fulfilling their role.

Members must comply with the Code whenever they:

- (a) conduct the business of the Council; or
 - (b) act, claim to act, or give the impression that they are acting as a representative of the Council.
- 3.2 There are mandatory requirements placed on Members to declare and keep up to date certain pecuniary interests which are set out in the Localism Act 2011 (section 29). A list of those Disclosable Pecuniary Interests is set out in Appendix 2 of the Code.
- 3.3 The Localism Act 2011 (section 29 (2)) gives Councils the discretion to place additional requirements, through the Code of Conduct, on its Members in relation to the declaration of pecuniary and non-pecuniary interests.
- 3.4 Beyond the statutory obligations in relation to Disclosable Pecuniary Interests as defined by the Secretary of State and set out in Appendix 2 of the Code, there are currently no additional requirements in the Code in respect of other types of interests that Members are required to declare.
- 3.5 The Council is at liberty to exercise its discretion and determine what additional requirements to place on its Members in relation to the declaration of pecuniary and non-pecuniary interests (not otherwise required to be declared by statute). It is also at liberty to determine what action a member must take upon declaration of any such interest. This discretion could be exercised to require Members to disclose membership of specific organisations such as the Freemasons.
- 3.6 However, if a new form of declarable interest is to be inserted into the Code defined solely by membership of a particular group, then this gives rise to an implication that membership of that group gives rise to an inherent conflict with a Member being able to exercise their role as a Councillor whilst also being a member of the particular group in question.
- 3.7 In considering whether to require membership of any particular group to be a disclosable interest per se, Members must be clear what steps then follow from a declaration of membership of the particular group. For instance, is membership of that group to require a withdrawal from taking part in a debate and/or decision making, with the result of curtailing a Member's ability to take an active part in Council business?
- 3.8 If membership of any particular group per se is to become a declarable interest under the Code, then Members must be able to clearly articulate the rationale behind that requirement and behind the step that must then be taken by a member as a consequence of them having declared that they are a member of the particular group.

- 3.9 An inability to articulate a clear, reasonable and defensible rationale may cause difficulties for the Council in terms of challenges from any particular group in question in respect of what the Council's classification of membership as a declarable interest implies about the group. A lack of a clear, reasonable and defensible rationale may also be subject to challenge on the basis that mandatory declaration is in breach of the Human Rights Act 1998 (as a breach of the right of free association) and so discriminatory.
- 3.10 Members should keep in mind that there are already provisions in the Code which require Members to declare interests and take appropriate action where a Member's membership of any other particular group should or might alter the nature of their involvement in any particular item of business that falls to them to be considered.
- 3.11 When determining what additional requirements to place on its Members in relation to additional or discretionary declarations required under its Code, the Council should consider the following:
- the basis on which the Council has decided to make it mandatory that a Member declare membership of specific organisation;
 - whether any declaration of other memberships/organisations should then equally apply;
 - whether a blanket declaration of a specific pecuniary/non pecuniary interest is necessary/desirable;
 - whether trying to define a personal interest by reference to specific memberships/organisations is the correct approach;
 - what restrictions are to be placed on Members who declare they have a pecuniary or non pecuniary interest on account of a membership of any particular organisation.
- 3.12 Whilst it may be desirable to revisit the types of "additional" or "discretionary" declarations (those not specifically required by statute) that should be required under the Code, it may be better for that consideration to be driven by a more precise set of criteria than by simple membership of an outside organisation per se. The criteria could be guided by the Nolan principles (the general principles set out as general obligations in the Code of Conduct) which focus on:-
- "disclose any interests which a member of the public with knowledge of the relevant facts would reasonably regard as so significant it is likely to prejudice a Member's judgement of the public interest ."*
- 3.13 Other local Councils have taken a similar approach including, for example, an obligation to declare a personal interest in any business of

the Council where it relates to or is likely to affect any body established for charitable purposes. This has been interpreted to include an obligation to declare an interest as a Freemason in appropriate circumstances.

- 3.14 The general principles set out above would apply to such a scenario in any event if it would be the case that the personal interest of a Member, if known by a member of the public with knowledge of the all of the relevant facts, could reasonably be regarded as so significant it is likely to prejudice a Member's judgement of the public interest. Similarly, the general principle would invoke a declaration where the business of the Council did directly affect the Member's Lodge.
- 3.9 There is a separate and corresponding Code of Conduct of Officers. That Code deals with Financial and Non-Financial Interests at section 8. This Code does provide more guidance in assisting Officers to decide whether to declare financial and non-financial interests. It is arguable that the requirements on Members and Officers should correspond (and be no more or less onerous) given that decisions by either Members or Officers should be subjected to equally high standards of conduct and are viewed in the same way by the public.
- 3.10 It should be noted that the Council is currently undertaking a comprehensive review which review includes the Codes of Conduct. It therefore appears appropriate that any discussion about and subsequent development of criteria for declaration of pecuniary and non-pecuniary interests (for both Officers and Members) be continued as part of the consultation on and feedback from that review.
- 3.11 It is suggested that the general principle of setting criteria in the form of a general requirement by which that Members are required to consider their interest and reflect it against the Nolan principles be supported rather than declaration of interests in individual organisations per se.

3 Wards Affected

- 4.1 The Code applies to all Members transacting business across all wards.

5.0 Local Ward Members

- 5.1 The Code and any changes to it apply to all Members.

6.0 Policy Implications

- 6.1 Discussed in the body of the report

7.0 Implications for Rural Communities

7.1 There are no identified implications for rural communities over and above any other type of community

8.0 Financial Implications

8.1 None immediately arising

9.0 Legal Implications

9.1 Discussed in the body of the report, relating to the requirements of Member standards generally and risks around identifying membership of any particular organisation as a declarable interest per se.

10.0 Risk Management

10.1 Discussed in in the body of the report.

11.0 Background and Options

11.1 Discussed in the body of the report.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Daniel Dickinson
Designation: Acting Director of Legal Services and Monitoring Officer
Tel No: 01270 685814
Email: Daniel.Dickinson@cheshireeast.gov.uk