

Audit & Governance Committee

Date of Meeting: 06 December 2018

Report Title: Mandatory Declarations of Interest

Portfolio Holder: Cllr Paul Findlow – Corporate Policy and Legal Services

Senior Officer: Daniel Dickinson – Acting Director of Legal Services

1. Report Summary

- 1.1. This report discusses whether or not the Audit & Governance Committee should particularise any outside organisations as being organisations which, by virtue solely of being members of the same, Councillors must declare and/or register an interest in under Cheshire East Council Member Code of Conduct (“the Code”).

2. Recommendations

- 2.1. That the Audit & Governance Committee:-
 - 2.1.1 note that there are adequate provisions in the Member Code of Conduct to appropriately deal with any conflicts of interest that may arise in decision making.
 - 2.1.2 decline to particularise any outside organisations as being organisations which, by virtue solely of being members of the same, Councillors must declare and/or register an interest in under Cheshire East Council Member Code of Conduct

3. Reasons for Recommendations

- 3.1. There are adequate provisions in the Code to appropriately deal with any conflicts that may arise in decision making.
- 3.2. In addition to the requirements in relation to disclosable pecuniary interests, the Code is clear that Councillors will have a personal interest in any business of the authority where (amongst other scenarios):-

“the business of the authority relates to or is likely to affect any body exercising functions of a public nature, which is directed to charitable purposes or whose principle purposes includes influencing public opinion or policy where you are a member of that body or in a position of general control or management” (paragraph 15 – emphasis supplied)

- 3.3. The approach taken by a number of other local authorities is to expect registrations/declarations under paragraph 15 (or similarly worded provisions) in respect of freemasonry where the membership in question includes membership of the Charitable arm of what would otherwise be a non-charitable association, i.e. the Grand Charity. The same approach is invariably taken in respect of other organisations that carry out charitable functions (e.g. Roundtable, Rotary etc...)
- 3.4. There is, therefore, no compelling reason why membership of any particular organisation should, in and of itself, trigger a mandatory declaration/registration of interests under the Code.
- 3.5. A requirement to declare/register simple membership of any particular outside organisation will not serve to improve probity in decision making beyond the existing provisions in the Code and is, therefore, likely to be a disproportionate infringement on the rights of Councillors under the Article 11 (Freedom of Assembly and Association) and Article 14 (Prohibition on Discrimination) of the Human Rights Act 1998.
- 3.6. In respect of Freemasonry in particular, regard should be had to the decision of the European Court of Human Rights (“ECHR”) in Grande Oriente d'Italia di Palazzo Guistiniani v Italy (no.1) and Grande Oriente d'Italia di Palazzo Guistiniani v Italy (no.2) where it was held that a law requiring candidates who had been nominated for public office to declare whether they were freemasons violated Articles 11 and 14. Councillors will recall that the policy or requiring similar declarations of successful candidates for judicial appointments was withdrawn by the then Lord Chancellor in light of the ECHR’s decision in those cases.

4. Other Options Considered

- 4.1. At Audit & Governance Committee on 27 September 2018 Members were invited to suggest which organisations should be prescribed for these purposes, and why. Three representations were received. One representation relayed a consensus against prescribing particular organisations, expressing the view that members were responsible for making appropriate declarations/registrations (howsoever they might arise) under the existing provisions of the Code.

- 4.2. The remaining two representations related solely to Freemasonry. In support of the case for requiring simple membership of the Freemasons to trigger a mandatory declaration/registration of interests, “widespread public perception” that freemasonry has an impact on public life and decisions was cited in both representations. Both representations also quoted a remark of a former leader of the Council, said to have been made on 22 July 2014. One of the representations linked to media reports on freemasonry.
- 4.3. Accordingly, the options considered were to prescribe membership of the Freemasons for these purposes, or to make no changes to the Code.

5. Background

- 5.1. This matter most recently arose through a notice of motion proposed by Cllr Corcoran and seconded by Cllr Mannion at Council on 15 December 2016. Council referred the matter to the Audit & Governance Committee who considered the same on 1 June 2017.
- 5.2. The Audit & Governance Committee report is available as a background document.
- 5.3. At that time, the Code only required Councillors to declare and register disclosable pecuniary interests. The Code did not require members to register or declare any other kind of interest.
- 5.4. The 1 June 2017 Audit & Governance Committee report noted that a review of the Constitution was being undertaken, which would include the Code. It resolved that the Constitution Committee should consider what amendments should be made to the Code as part of the review of the Constitution. The minutes of the Audit & Governance Committee record that the Committee supported the general principle of setting criteria in the form of a general requirement in accordance with which Members were required to consider their interests, rather than requiring a declaration of interests in individual organisations.
- 5.5. Ultimately, the Constitution Committee, through Council did not require mandatory declarations/registrations on account of simple membership of any particular outside organisation. Instead, it amended the Code by adding the criteria around personal and prejudicial interests, and by providing guidance on pre-determination and bias. In addition, it enabled the Audit & Governance Committee to prescribe, from time to time, certain bodies that membership of which would amount to a personal interest.
- 5.6. In light of what is set out in section 3 of this report (above), the view of the Audit & Governance Committee captured in the minutes of its 1 June 2017

meeting, the approach taken by Constitution Committee (endorsed by Council) and the absence of any rationale other than two representations citing “widespread public perception”, media reports and remarks of the former Leader said to have been made in 2014, it is considered that no further changes are needed to the Code.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. Dealt with in the body of the report.

6.2. Finance Implications

6.2.1. None identified.

6.3. Policy Implications

6.3.1. None identified.

6.4. Equality Implications

6.4.1. Dealt with in the body of the report.

6.5. Human Resources Implications

6.5.1. None identified.

6.6. Risk Management Implications

6.6.1. None identified.

6.7. Rural Communities Implications

6.7.1. None identified.

6.8. Implications for Children & Young People

6.8.1. None identified.

6.9. Public Health Implications

6.9.1. None identified.

7. Ward Members Affected

7.1. No ward is affected any more or less than any other ward.

8. Consultation & Engagement

- 8.1. In addition to the exposure that this issue has had through the notice of motion to Council, it has been considered by Audit & Governance in June 2017 and by the Constitution Committee (and Sub-Committee/Working Groups) through the Constitution review exercise towards the end of 2017. The Constitution review process ultimately produced changes to the Constitution which relate, and those changes were adopted by Council in December 2017. Members were also consulted, via their group representatives on the Audit & Governance Committee, at (and following) the September 2018 Audit & Governance Committee.

9. Access to Information

- 9.1. Audit & Governance Committee 1 June 2017:-

<http://moderngov.cheshireeast.gov.uk/ecminutes/ieListDocuments.aspx?CId=486&MIId=6598&Ver=4>

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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