

CODE OF CONDUCT: DECLARATION OF MEMBERSHIP OF THE FREEMASONS

To: **Constitution and Ethics Committee**

Meeting Date: **19 November 2015**

From: **LGSS Director of Law, Property & Governance and
Monitoring Officer**

Electoral division(s): **All**

Forward Plan ref: **N/A** *Key decision:* **No**

Purpose: **To brief the Constitution and Ethics Committee on the
legal position in relation to registration and declaration of
membership of the Freemasons**

Recommendation: **It is recommended that**

- a) the Constitution and Ethics Committee note the
contents of this report**
- b) the Constitution and Ethics Committee consider the
suggested amendment to the Code of Conduct in
accordance with Annex 1 of this report**

<i>Officer contact:</i>	
Name:	Quentin Baker
Post:	Director of Law, Property & Governance and Monitoring Officer
Email:	quentin.baker@cambridgeshire.gov.uk
Tel:	01223 727961

1. BACKGROUND GUIDANCE AND UK LEGISLATION

In 2004 the Standards Board for England issued guidance recommending that membership of the Freemasons should be declared by Local Councillors under the Councillors' Code of Conduct which was then in existence. Parliament has since abolished the Standards Board regime and the model code of conduct which had previously been a requirement for adoption in all councils.

The new standards arrangements are contained within the Localism Act 2011 at Chapter 7ⁱ and in the secondary legislationⁱⁱ made under the Act. In the main, the new regime permits councils to determine their own rules regarding personal interests. However, the legislation requires that the Codes of conduct should reflect the seven principles of conduct in public life as established by the Nolan Committee.

It is essential for the public to have confidence that those, such as councillors, in positions of public influence and power put the interests of the public first, rather than making decisions for their own personal financial benefit. The requirement to declare any relevant interests is regarded as an important aspect of maintaining public confidence and the statutory rules contain provisions requiring councillors to declare financial interests. In addition, many councils have adopted local rules requiring councillors to declare interests of a non-financial nature which may nevertheless be seen as having the potential to affect their judgement.

Pursuant to section 28(2) of the Localism Act 2011, the Council must secure that its Code of Conduct includes the provision the authority considers appropriate in respect of its register and disclosure of disclosable pecuniary interests. As membership of the Freemasons is not a disclosable pecuniary Interest, there is no statutory obligation to have this entered onto the Register of Interests. However, the Council may include local provisions in its code of conduct which place additional requirements on members to disclose interest other than disclosable pecuniary Interests. Guidance on transparency and practical information in relation to personal interests has been published by the Governmentⁱⁱⁱ as well as an illustrative text for a local code of conduct^{iv}.

2. CASE LAW AND HUMAN RIGHTS

Perhaps surprisingly, there is a dearth UK case law directly relating to this issue. There is, however, an Italian case of interest involving Freemasons and declarations.

The Grande Oriente D'Italia di Palazzo Giustinuani, an Italian Masonic association, introduced an application to the European Court of Human Rights (ECHR) to challenge a regional law in the autonomous region of Friuli-Venezia Giulia. The law concerns rules to be followed for nominations to public offices and, in particular, required candidates for such posts to declare whether they were a member of a Masonic or, in any event, a secret association. The absence of a declaration constituted a ground for refusing appointment. It should be noted that this case involved a post on the executive board of a company in which the Region was a stakeholder. One out of the 237 candidates declared they were a Mason and eventually got the job. The facts therefore do not directly accord with the engagement of Councillors.

The Court observed^v that the provision in question distinguished between secret and Masonic associations, membership of which had to be declared, and all other associations. Members of the latter were exempted from any obligation to make such a declaration when seeking nomination for public office, and could not therefore incur the statutory penalty for an omission.

Accordingly, there was a difference of treatment between the members of the applicant association and the members of any other non-secret association with no objective and reasonable justification. There had therefore been a violation of the convention in that forcing official declarations breached Italian Masons rights to free association and was discriminatory.

There have not been any similar challenges brought in relation to Masonic membership in England and Wales however the above ruling did have an effect in terms of declarations by the judiciary or magistrates, as reported in the Telegraph^{vi}.

Since 1998, those becoming judges or magistrates were obliged to declare that they were a Mason after the then Home Secretary, Jack Straw, said the membership could raise suspicions of impartiality. This requirement was abandoned in light of the ECHR ruling and a review where Mr Straw said it would be disproportionate to continue the requirement to declare.

3. GOING FORWARD

It appears that there is nothing, at present, to suggest that councillors must declare their membership of influential groups, particularly the Freemasons. Local authorities have different local arrangements to determine how their declaration mechanism works. Derbyshire County Council decided in 2012 that councillors will have to declare membership of influential groups, including the Freemasons^{vii}. Conversely, it was reported in 2013^{viii}, that the Isle of Wight Council dropped such a requirement.

The Italian case cited above does not provide a legal authority in the UK as to whether making such declarations mandatory is unlawful. It does suggest, however, that it may not be advisable to single out the Freemasons as an organisation where registration and declaration of interests is mandatory. Therefore, should the Constitution and Ethics Committee decide that a requirement for further declarations is necessary in this regard; it is recommended that an additional subsection be added to section 10.1 of the Code of Conduct as per the Annex 1 attached.

Membership of the Freemasons may be entered into the Register of Interests at the request of the Councillor in question however this would not be mandatory. If a Councillor does not have such a membership in the Register then they would be required to declare such a membership pursuant to section 10.2 of the Code of Conduct.

Source Documents	Location
Listed in endnotes to document	As per addresses in endnotes to document

ⁱ <http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

ⁱⁱ <http://www.legislation.gov.uk/ukxi/2012/1464/contents/made>

ⁱⁱⁱ *Openness and transparency on personal interests – A Guide for Councillors – September 2013*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf

^{iv} <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

^v *Grande Oriente D'Italia Di Palazzo Giustiniani v Italy (No. 2)* <https://wcd.coe.int/ViewDoc.jsp?id=1142711&Site=COE>

^{vi} <http://www.telegraph.co.uk/news/uknews/law-and-order/6509916/Judges-no-longer-have-to-declare-Freemasonry.html>

^{vii} <http://www.bbc.co.uk/news/uk-england-derbyshire-27702037>

^{viii} <http://onthewight.com/2013/05/15/councillors-freemason-declaration-secretly-dropped-by-last-iw-council/>