

Report to: Governance Committee

Date of meeting: 3 March 2020

By: Chief Operating Officer

Title: Updates to the Code of Conduct and Conflicts of Interest Policy in Employment

Purpose: To seek the Committee's approval for amendments to the Code relating to declarations of conflict of interest

RECOMMENDATIONS

The Committee is recommended to approve the amendments to the Policy as set out in paragraph 3.2 and Appendix 1.

1 Background

1.1. The Council's Code of Conduct and Conflict of Interest Policy currently requires employees to declare membership of secret societies. The Head of Law for the Freemasons National Lodge has written to the Council suggesting that, in light of a European Court of Human Rights case where the requirement to declare membership of a secret society was deemed unlawful, the Council will want to amend its Policy and remove any relevant records.

1.2. The Committee may wish to note that Councillors are not required by the Council to make this declaration.

1.3. As a result of this representation, the opportunity has been taken to review the Code of Conduct and Conflicts of Interest Policy more broadly, including from an audit and information governance perspective, and following this, some minor amendments are proposed.

2. Supporting Information

2.1. In terms of membership of secret societies, the history of relevant cases and broader position has been reviewed. In summary, the cases to date indicate that such a requirement is unlawful if there is no objective or reasonable justification for this difference in treatment compared to the membership of non-secret societies which do not have to be declared, but which could equally be problematic (e.g. groups advocating racism). However, it has been found that a statutory prohibition on appointing Freemasons to public office can be objectively and reasonably justifiable where it has been introduced in order to 'reassure' the public at a time when there has been controversy surrounding the role of Freemasons in the life of the country and where it pursued the legitimate aims of protecting national security and preventing disorder.

2.2. The current required declaration of membership of secret societies in the Council's Code of Conduct and Conflict of Interest Policy may therefore be unlawful if it is (i) not in pursuance of a legitimate aim and (ii) is not able to be objectively and reasonably justified.

2.3. In order to test the above, a review of HR casework records has identified that to date, there have been no concerns or allegations arising out of an employee's membership of a secret society.

2.4. Alongside this, a review of existing conflict of interest declarations indicates that only 5 out of 4738 mention the term 'freemason', constituting roughly 0.11%. The position of other Council's has also been tested and both Brighton and Hove City Council and Surrey County Council have confirmed that they have recently updated their relevant policies to remove the requirement for an individual to declare membership of a secret society.

3. Conclusion and Recommendations

3.1. In light of the legal position summarised in Section 2 above, in order to retain the current requirement that membership of all secret societies is declared it would be necessary to evidence a clear rationale. Given that we have no evidence that membership of a secret society (or non-secret society) has resulted in a conflict of interest, it would be difficult to justify such a requirement.

3.2. The Committee is therefore recommended to approve the Code of Conduct and Conflict of Interest Policy being amended to remove the requirement for membership of a secret society to be declared. However, in order to ensure that our Policy remains robust and provides the required level of assurance, the Policy has been amended to highlight the requirement to declare any situation that could be interpreted as providing an unfair advantage.

3.3. In addition, some minor amendments have also been made to strengthen to declaration process. The proposed changes to the Policy are highlighted in Appendix 1.

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