

# Croydon Council

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE 2 FEBRUARY 2015</b>
<b>AGENDA ITEM:</b>	<b>6</b>
<b>SUBJECT:</b>	<b>DISCLOSURE AND BARRING SERVICE CHECKS FOR MEMBERS</b>
<b>LEAD OFFICER:</b>	<b>COUNCIL SOLICITOR AND MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR HALL</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The continued development of and the promotion of new initiatives to enhance ethical standards is a key component of the Council's approach to ethical and corporate governance and falls within the Ethics Committee's remit.	
<b>FINANCIAL IMPACT:</b> Any costs would need to be met from within existing budgets for Members.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> This is not a key decision.	

## For general release

### 1. RECOMMENDATIONS

That Members:

- 1.1 Consider the proposals in respect of criminal records checks via the Disclosure and Barring Service (DBS) for Members and agree the Protocol attached at Appendix 1.

### 2. EXECUTIVE SUMMARY

- 2.1 This report provides information about a proposal on criminal records checking for Members and a draft protocol is attached for Members' consideration at Appendix 1.
- 2.2 The changes outlined in this report and attached Protocol mean that the current protocol on criminal record checks needs to be reviewed. Members are invited to consider the revised proposals set out within this report and to approve a revised protocol as attached at Appendix 1.

### **3. BACKGROUND**

- 3.1 The Council previously adopted a Protocol on CRB (now the Disclosure and Barring Service – see para. 3.4) referred to checking for Members, including co-opted Members in view of the Council’s ongoing responsibility, as Corporate Parent, to children and vulnerable adults.
- 3.2 Previously the Council’s policy was to undertake a criminal records check for all Councillors, on the basis that they:
- a. are involved in discharging education and social care functions of the Council;
  - b. are in an office which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services.
- 3.3 It is now appropriate for this policy to be reconsidered in light of the changes outlined below. The Council may not retain the previous approach of checking all Councillors which was based on the premise that all Members may be involved in discharging education and social care functions of the Council or may be asked to serve or substitute on a committee discharging those functions or whether one of the other options set out within the body of this report, or a combination thereof, is considered more appropriate.
- 3.4 However, the Protection of Freedoms Act 2012 (“the 2012 Act”) has abolished the former arrangements for the vetting and barring of individuals from working with children and vulnerable adults. The Criminal Records Bureau and the Independent Safeguarding Authority were merged to form a new body, the Disclosure and Barring Service (DBS). Criminal Records Bureau checks are now therefore called “DBS checks”.
- 3.5 The Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) has been amended by the 2012 Act to scale back the number and type of positions/circumstances which should be subject to criminal records checking. The provisions requiring checks now only relate to those persons who have close and unsupervised contact with vulnerable groups including children. There are specific definitions as to what this means in practice.
- 3.6 The definition of “regulated activity” under the 2006 Act has been amended. ”. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre. Previously, the definition specifically included councillors who “discharged functions” relating to education functions or social services functions or was a Member of the Executive, Committee, Sub-Committee or area Committee which discharged any such functions.

- 3.7 The majority of Members or co-opted members do not have unsupervised contact with children or adults as part of their role and therefore will not be involved in “regulated activity”. Therefore, unless activities fall within the redefined scope of “regulated activity”, Members or co-opted members are not entitled to be checked by virtue only of their position as a Member or co-opted member.
- 3.8 However, safeguarding children, young people and vulnerable adults is a key priority at the Council, and the important role Members and co-opted members play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised. The fact that all Members were checked may have strengthened public confidence.
- 3.9 The key provisions as provided for legislation are summarised in the draft Protocol at Appendix 1. The Protocol also sets out how the information contained within the DBS will be dealt with and who will have access to the information and for what purpose. In addition, Annexure 1 to the Protocol is a non-exhaustive list of occupations that are known as the exceptions to the Rehabilitation of Offenders Act 1974 (ROA) and are accordingly eligible for DBS checking. Annexure 2 to the Protocol provides more detail about a specific category of exceptions which are directly relevant to the proposals within this report.
- 3.10 Given the revised definitions introduced as a result of the Protection of Freedoms Act there is no legal provision made for a criminal records check on Members unless it is considered that the Member is undertaking any of the activities listed in paragraphs 3-7 of the attached Protocol.
- 3.11 While the statutory requirement for automatic checks on Members has been lifted, some discretion has been left to councils to continue previous arrangements if they wish. Legislative provisions applicable to the Rehabilitation of Offenders has been amended to allow checks on individuals who were previously covered by the definitions of regulated activity for children and vulnerable adults that were applicable prior to 10 September 2012.
- 3.12 In respect of enhanced checks, the Council may still carry out checks on any Members occupying positions which fall within the ROA and the Police Act 1997 (Criminal Records) Regulations 2002. This includes Members engaging in any activity which, prior to the amendment by the Protection of Freedoms Act 2012, would have fallen within the ambit of regulated activity in respect of Children. In addition it includes any “work with adults” which is defined as including any local authority in the exercise of its social services functions, any Member of a local authority who discharges any social services functions, any member of the Executive who discharges such functions and any Member of a Committee, Sub-committee or area Committee which discharges such functions.
- 3.13 Previously the Council’s policy was to undertake a criminal records check for all Councillors and enhanced CRB checks for those who discharged education and social care functions. This was considered to create public confidence in situations where elected Members might visit care homes, schools, clubs or

other settings where they might have unsupervised access to vulnerable groups including adults.

3.14 It is now appropriate for this policy to be reconsidered in light of the changes outlined above. A decision is required as to the extent of the Council’s checking policy.

3.15 In adopting a new approach, the Committee may wish to consider the following options or a combination of them:

a) No checking: Decide not to undertake criminal records checking, even where enhanced checks are permitted, on the basis that the law has been deliberately changed to remove this statutory requirement (with the exception of Members on Corporate Parenting Panel, which should continue).

b) Targeted checking: Identify the specific Member positions which discharge social services and education functions and ask that such post holders undergo enhanced criminal records checking on the basis that they met the criteria for regulated activity applicable before 10 September 2012.

3.16 If the Committee is minded to identify only certain positions which discharge social and education functions for DBS or enhanced DBS checking, this might be said to include any portfolio or shadow portfolio, Committee, Board or Panel position, including Scrutiny and Health and Wellbeing Board relating to the following functions:

- a) Early Years and Primary Education
- b) Secondary Education
- c) 16-19 Education
- d) Adult Care Services
- e) Child Care Services
- f) Corporate Parenting Panel
- g) Adult Social Services Review Panel
- h) Leader
- i) Deputy Leaders
- j) Shadow Leader
- k) Shadow Deputy Leaders.
- l) Scrutiny and Strategic Overview Committee relating to social and education functions
- m) Scrutiny Children and Young People Sub-committee
- n) Scrutiny Health, Social Care and Housing Sub-Committee
- o) Health and Wellbeing Board
- p) Any Member who sits as a substitute or nominee for another member in relation to any of the above roles.

3.17 Below is a table setting out the costs and time frame for undertaking DBS checking:

Type of check and cost	What it will check for	How long it normally takes
Standard		About 2

Type of check and cost	What it will check for	How long it normally takes
– £26	Spent and unspent convictions, cautions, reprimands, final warnings	weeks
Enhanced - £44	As above - plus any additional information held locally by police forces that's reasonably considered relevant to the post applied for	About 4 weeks
Enhanced with list checks - £44	As above - plus a check of the appropriate DBS barred lists. A request of this nature is restricted to a narrow set of roles - the position must be eligible for an enhanced level DBS certificate as above and be specifically listed in the Police Act 1997 (Criminal Records) regulations as able to check the appropriate barred list(s).	About 4 weeks

3.18 The attached Protocol makes the following recommendations:

That:

- Those Members of the Council who fall within the categories below are required to undergo enhanced level DBS checks, namely if they are:
  - a. a Member of a Committee, Sub-committee, Area Committee, Joint Committee or Council Board or Panel which discharges any education functions, or social services functions, of the Council;
  - b. a Member of the Executive or Committee of the Executive which discharges any such education or social services functions;
  - c. a Member of a Committee, Sub-committee, Area Committee, Joint Committee or Council Board or Panel which discharges any social services functions of the Council which relate wholly or mainly to vulnerable adults;
  - d. a Member of the Executive or Committee of the Executive local authority which discharges who discharges any social services functions of the Council which relate wholly or mainly to vulnerable adults;
- Co-opted members be required to undergo enhanced level DBS checks if they are members (voting or non-voting) of a Committee (including a Sub-Committee, Area Committee or Joint Committee), Board or Panel

which discharges any education or social services function of the Council.

#### **4. CONSULTATION**

- 4.1 Informal consultation has indicated that there is a lack of consistency between the approaches of those Local Authorities which have thus far made changes to the criminal records checking process for Members.

#### **5. EQUALITIES IMPACTS**

- 5.1 Members, just like ordinary citizens, have a right to respect for private and family life. However, this entitlement must be balanced against the fact that they are performing a public function with all the attendant obligations, and that vulnerable citizens are entitled to be protected and treated appropriately. It is suggested that the safeguards proposed in this report strike a balance between the rights of Members and those of the citizens they serve.

#### **6. OTHER CONSIDERATIONS**

- 6.1 There are no specific financial, human resources, environmental and crime and disorder reduction impacts beyond what is set out in the body of the report and the draft Protocol.

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**BACKGROUND DOCUMENTS:** None