

Croydon Council

REPORT TO:	ETHICS COMMITTEE 29 JUNE 2015
AGENDA ITEM:	8
SUBJECT:	DISCLOSURE AND BARRING SERVICE CHECKS FOR MEMBERS
LEAD OFFICER:	BOROUGH SOLICITOR, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
CABINET MEMBER:	COUNCILLOR SIMON HALL
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: 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.	
FINANCIAL IMPACT: Any costs would need to be met from within existing budgets for Members.	
FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision.	

For general release

1. RECOMMENDATIONS

That Members:

- 1.1 Note the Protocol in respect of criminal records checks via the Disclosure and Barring Service (DBS) for Members attached at Appendix 1, approved by the former Chair under delegation from the Committee, such Protocol to be effective as of 1 July 2015.

2. EXECUTIVE SUMMARY

- 2.1 On 2 February 2015, the Committee received a report setting out legislative changes and appending a draft protocol for Disclosure and Barring service (DBS) Checking for Members' consideration. This report provides a brief update to Members following amendments being made to the draft protocol and approval of the former Chair pursuant to the delegation from Committee to the Chair on 2 February 2015. The Protocol is to be effective as on 1 July 2015.

2.2 The legislative changes outlined in the previous report to Members meant that the current protocol on criminal record checks needed to be revised and these legislative changes are included in Appendix 1.

3. BACKGROUND

3.1 The Council previously adopted a Protocol on CRB (now DBS) which required checking of all Members, however the Protection of Freedoms Act 2012 (“the 2012 Act”) **abolished** the former arrangements for the vetting and barring of individuals from working with children and vulnerable adults by amending the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”) to significantly reduce the number and type of positions/circumstances which are permitted be subject to criminal records checking.

3.2 The provisions permitting 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 and ,as advised to Members previously, despite the Council’s desire for the utmost openness and transparency, the revised provisions mean that the Council is prohibited from requesting checks for individuals who are not set out in the legislation as being eligible, as to do so would be contrary to the Rehabilitation of Offenders Act 1974 (“ROA”), as amended.

3.3 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.

3.5 The key provisions as provided for legislation are summarised in the 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 as this is similarly regulated by statute. In addition, Annex 1 to the Protocol is a non-exhaustive list of occupations that are known as the exceptions to the Rehabilitation of Offenders Act 1974 and are accordingly eligible for DBS checking. Annex 2 to the Protocol provides more detail about a specific category of exceptions which are directly relevant to the Protocol.

3.6 Given the revised definitions introduced as a result of the Protection of Freedoms Act the legal provision made for criminal records check on Members has been removed by Parliament. The exceptions are if it is considered that the Member is undertaking any of the activities listed in paragraphs 3-7 of the attached Protocol.

3.7 Members’ attention is specifically drawn to paragraphs 22-27 of the Protocol which sets out the disclosure process, which provides that where checks have been undertaken and information is disclosed to the Monitoring Officer (or her Deputies) pursuant to the Protocol, there is a prohibition on disclosure of such information to any other person, including Party Leaders, **unless** the Member in

question has provided their written consent permitting disclosure to the additional person concerned. The reason for this is that there is a statutory prohibition on such disclosure (beyond the response in 26.1 of the Protocol) which makes it a **criminal offence** to disclose information from a DBS check to persons who are not entitled to hold such information. If such information were disclosed to Party Leaders with the written consent of the Member concerned, the Party Leaders would not be permitted to disclose that information further without potentially rendering themselves liable to criminal sanctions.

4. CONSULTATION

- 4.1 Informal consultation has indicated that there is a lack of consistency between the approaches of those Local Authorities which have made changes to the criminal records checking process for Members. Specific advice was sought from the DBS about the ability of the Council to require all Members to undergo a DBS check and the Council received a written response from the DBS which set out in summary that if a role does not meet the eligibility criteria for a DBS check, there is no legal entitlement for the organisation to undertake a DBS check. This is regardless of whether or not the person carrying out the role does not mind being checked. It would be a breach of legislation for the authority to undertake DBS checks when there is no legal entitlement.

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 contained 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 Protocol.

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BACKGROUND DOCUMENTS:

None