

SLOUGH BOROUGH COUNCIL

REPORT TO: Council **DATE:** 26th January 2021

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(For all enquiries)

WARD(S): All

PART I FOR DECISION

RECOMMENDATION OF THE AUDIT AND CORPORATE GOVERNANCE COMMITTEE FROM ITS MEETING HELD ON 10TH DECEMBER 2020 - DISCLOSURE AND BARRING SERVICE – CHECKS ON MEMBERS

1 Purpose of Report

To consider the recommendation of the Audit and Corporate Governance Committee made on 10th December 2020 to amend the Councillors' Code of Conduct to include provision to make "basic" checks on all Councillors and "enhanced" checks on Councillors who hold portfolios relating to vulnerable adults and children with the Disclosure & Barring Service ("DBS") and for any fees payable to the DBS for making checks to be met from the respective Councillors' allowances.

2 Recommendation(s)/Proposed Action

That the Councillors' Code of Conduct, in the terms set out at paragraph 5.10 of this Report, be amended to include provision to make "basic" checks on all Councillors and "enhanced" checks on Councillors who hold portfolios relating to vulnerable adults and children, with the Disclosure & Barring Service ("DBS"), and for any fees payable to the DBS for making checks to be met from the respective Councillors' allowances; effective from the municipal year 2021.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

3a. Slough Joint Wellbeing Strategy Priorities

Good governance arrangements will have positive implications for the SJWS and the JSNA

3b Five Year Plan Outcomes

Good governance arrangements will enhance all the outcomes of the Five Year Plan

4 Other Implications

(a) Financial

The financial implications arising from this report are set out at paragraphs 5.6.3, 5.6.10, 5.6.15, and 5.6.17 of this Report.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
To consider the contents of this report and to resolve whether or not the Councillors Code of Conduct should be amended to include provision for the making of checks against Members with the Disclosure and Barring Service (DBS).	Legal / Regulatory Risk of challenges under the Human Rights Act 1998 based on protected rights.	Existing operating constitutional arrangements whereby searches are only made against Members undertaking regulated activities.	Likelihood: Low (3) Impact: Marginal (2) Score: 6	Enhanced and fortified constitution for the future.

(c) Human Rights Act and Other Legal Implications

Constitutional and Governance arrangements in relation to Codes of Conduct rely for their effectiveness on the exercise of disciplinary powers, which has the potential to engage provisions in the Human Rights Act 1998 relating to the right to a fair hearing, the right to respect for private and family life, the right to freedom of thought and conscience and the right to freedom of expression, contained in articles 6, 8, 9 and 10 respectively, of the European Convention on Human Rights, which is given effect to in domestic law by the Human Rights Act 1998.

Local Authorities have a statutory duty under Section 9P of the Local Government Act 2000 to prepare and keep up to date a constitution, whose contents are partly prescribed by statute, partly by directions given the Secretary of State, and partly matters of local content, within a statutory framework. The Constitution must include the Council's code of conduct for the time being under Section 28 of the Localism Act 2011 within it.

(d) Equalities Impact Assessment

There is no identified need for an Equalities Impact Assessment arising from the contents of this Report.

5 Supporting Information

- 5.1 The Audit & Corporate Governance Committee, at their meeting on 3 August 2020, considered a report concerning the issue of whether the Councillors' Code of Conduct should be amended to include provision for the making of checks against

Members with the Disclosure and Barring Service (DBS). The Committee resolved that the matter be referred to the Member Panel on the Constitution (MPOTC) to consider in greater detail.

At its meeting on 15th September 2020, the MPOTC recommended that the Councillors' Code of Conduct, in the terms set out at paragraph 5.10 of this Report, be amended to include provision to make "basic" checks on all Councillors and "enhanced" checks on Councillors who hold portfolios relating to vulnerable adults and children, with the Disclosure & Barring Service ("DBS"), and for any fees payable to the DBS for making checks to be met from the respective Councillors' allowances.

The Audit and Corporate Governance Committee considered the MPOTC recommendation at its meeting held on 10th December 2020. In agreeing to recommend that the Code of Conduct be amended in the terms set out at paragraph 5.10 of the report; Members also recommended that the changes be implemented from the new municipal year ie May 2021.

- 5.2 The Disclosure and Barring Service (DBS) came into being on 15 October 2012. It was set up by Section 87 of the Protection of Freedoms Act 2012.
- 5.3 Section 88 of the Protection of Freedoms Act 2012 gave the Secretary of State power to transfer to the DBS his functions under Part V of the Police Act 1997, relating to criminal records, and his functions under the Safeguarding of Vulnerable Groups Act 2006, relating to children and vulnerable adults. It also gave him power to dissolve the then existing Independent Safeguarding Authority. Accordingly, by the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012, he transferred his powers relating to criminal records, and his powers relating to safeguarding of vulnerable groups, to the new DBS and he dissolved the Independent Safeguarding Authority and transferred its functions too, to the new DBS, with effect from 1 December 2012.
- 5.4 Effectively, therefore, the DBS has, with effect from 1 December 2012, become the only official source of information about criminal convictions and related matters, and about persons who have been placed on the Children's Barred List and the Adults' Barred List under the Safeguarding of Vulnerable Groups Act 2006.
- 5.5 The rules governing the making of searches and the issue of information by the DBS in relation to criminal offences and related matters, and the issue of information relating to persons on the Children's Barred List and the Adults' Barred List, are partly contained in Part V of the Police Act 1997, as amended, partly in the Safeguarding of Vulnerable Groups Act 2006, as amended, partly in the Protection of Freedoms Act 2012, partly in the Rehabilitation of Offenders Act 1974, as amended, and partly in subordinate legislation made under these statutes.
- 5.6 **Procedures and processes for making checks with the DBS**
 - 5.6.1 Under Section 112 of the Police Act 1997 the DBS must issue a "criminal conviction certificate" to any *individual* (author's emphasis) who is over 16 years of age and who pays the prescribed fee.
 - 5.6.2 A "criminal conviction certificate" will only provide information about criminal convictions or conditional cautions which are not spent under the Rehabilitation of Offenders Act 1974, and whether the applicant is subject to notification requirements under the Sexual Offences Act 2003. It will not

provide information about spent convictions or cautions, any other information in police records, or whether the applicant is on the Children's Barred List or the Adults' Barred List. The obtaining of this certificate is commonly referred to as the "basic check".

- 5.6.3 The application for this "basic check" can be made online by Members directly with the DBS, or by using companies on a list approved by the DBS. There is a fee payable (currently £23.00). A Member carrying out such a search directly with the DBS, or via an approved company, will need details of all addresses for the previous five years, their national insurance number, their passport and driving licence.
- 5.6.4 The DBS will accept an application for a "basic check" on a Member by the Council if the Council have that Member's consent to make the check and the Council make the application through a "responsible organisation". A "responsible organisation" is one approved by the DBS. Certain local authorities are registered with the DBS as "responsible organizations" e.g. Wandsworth Borough Council, Powys County Council, Buckinghamshire County Council, Cornwall Council, Dorset County Council (Social Services) and Devon County Council. Slough Borough Council is not on the DBS's list of registered responsible organisations. If the Council apply for a "basic check" on a Member using a "responsible organisation" they will need to obtain from such Member the information referred to in the preceding sub-paragraph i.e. details of all addresses for the previous five years, their national insurance number, their passport and driving licence.
- 5.6.5 The "basic check" "criminal conviction certificate" will be issued to the Member direct, even if the application was made by the Council through a "responsible organisation", and the Member would then need to produce it to the Council.
- 5.6.6 Under Section 113A of the Police Act 1997 the DBS must issue a "criminal records certificate" to any *individual* (author's emphasis) who is over 16 years of age and who pays the prescribed fee.
- 5.6.7 A "criminal records certificate" will only provide information about criminal convictions or conditional cautions which are spent or unspent under the Rehabilitation of Offenders Act 1974, if the applicant is subject to notification requirements under the Sexual Offences Act 2003 and details of any warnings or reprimands. It will not provide any other information in police records or whether the applicant is on the Children's Barred List or the Adults' Barred List. This is commonly referred to as the "standard check".
- 5.6.8 An application for a "standard check" must, however, either be counter signed, or submitted electronically, by a "registered person" and accompanied by a certificate by the "registered person" that the certificate is required for the purposes of "an exempted question". The Council is a "registered person" for these purposes. An "exempted question" for these purposes is one that relates to offences and cautions which are spent under the Rehabilitation of Offenders Act 1974. By virtue of section 4 of that Act an "exempted question" can only be asked in respect of matters prescribed by orders made under that Act. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 prescribes professions, offices, employments, work

and occupations in respect of whom an “exempted question” may be asked. The office or occupation of a local government Councillor is not prescribed as one in respect of which an “exempted question” may be asked. However, any 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 their normal duties, to have access to vulnerable adults in receipt of such services, or any work done infrequently which would, if done frequently, be regulated activity relating to children under the Safeguarding of Vulnerable Groups Act 2006, allow an “exempted question” to be asked.

- 5.6.9 The effect of the above is that the Council is able to obtain a “standard check” only in respect of Member whose hold portfolios relating to vulnerable adults and children as they are the only Members in respect of whom an “exempted question” may be asked. The Council, as a “registered person” would not be able to certify that the application relates to a person in respect of whom an “exempted question” can be asked in respect of any other Members.
- 5.6.10 The fee payable to the DBS for a “standard check” is £23.00. The “standard check” “criminal records certificate” issued by the DBS would be sent direct to the Member in respect of whom any application is made, even if submitted by the Council as a “registered person”. The Member would need to produce it to the Council. The Member can also register, for an annual charge of £13.00, to use the DBS’s Update Service which enables the Member to give the Council permission to inspect if there have been any changes to the certificate.
- 5.6.11 Under Section 113B of the Police Act 1997 the DBS must issue an “enhanced criminal record certificate” to any *individual* (author’s emphasis) who is over 16 years of age and pays the prescribed fee.
- 5.6.12 An “enhanced criminal records certificate” will only provide information about criminal convictions or conditional cautions which are spent or unspent under the Rehabilitation of Offenders Act 1974, if the applicant is subject to notification requirements under the Sexual Offences Act 2003 and details of any warnings or reprimands. It will also provide other information in police records, but not whether the applicant is on the Children’s Barred List or the Adults’ Barred List. This is commonly referred to as the “enhanced check”
- 5.6.13 An application for an “enhanced check” must, however, either be counter signed, or submitted electronically, by a “registered person” and accompanied by a certificate by the “registered person” that the certificate is required for the purposes of “an exempted question asked for a prescribed purpose”. The “specified purpose” for an enhanced check is to enable checks to be made in respect of people working with children or adults in certain circumstances such as receipt of healthcare or personal care and for a small number of other roles such as taxi licence applications and people working in the Gambling Commission.
- 5.6.14 The Council is therefore unable to obtain an “enhanced check” in respect of Members, except for those who hold portfolios relating to vulnerable adults and children, insofar as they work with people in a healthcare or personal care setting. The Council as a “registered person” would not be able to certify

that the application relates to a person in respect of whom an “exempted question for a prescribed purpose” can be asked, in respect of any other Members.

- 5.6.15 The fee payable to the DBS for an “enhanced check” is £40.00. The “enhanced check”, “enhanced criminal records certificate”, issued by the DBS would be sent direct to the Member in respect of whom any application is made, even if submitted by the Council as a “registered person”. The Member would need to produce it to the Council. The Member can also register, for an annual charge of £13.00, to use the DBS’s Update Service which enables the Member to give the Council permission to inspect if there have been any changes to the certificate.
- 5.6.16 Under Section 113BA and Section 113BB of the Police Act 1997, relating to children and vulnerable adults respectively, an “enhanced criminal records certificate” can, in prescribed cases, include suitability information, namely whether the applicant is barred from regulated activity relating to children or vulnerable adults. An application for this suitability information is commonly referred to as an “enhanced check with barred list(s)”. The prescribed cases relate to regulated work with children and vulnerable adults and so do not affect Members other than holders of portfolios affecting children and vulnerable adults. Accordingly the Council cannot procure an “enhanced check with barred list(s)” in respect of Members other than those portfolio holders.
- 5.6.17 The fee for an “enhanced check with barred list(s)” is £40.00. Any certificate issued by the DBS would be sent by the DBS directly to the Member in respect of whom the check was carried out. The Member would need to produce this to the Council.
- 5.7 At present the Council’s policy is only to carry out “standard checks” on Members with portfolio responsibilities for Children’s and Education Services and for Health & social Care, on Members of the Corporate Parenting Panel and the Council Nominee for the Children’s Trust Board. The Policy document is appended to this Report.
- 5.8 Most councils have not adopted a requirement for “basic checks” to be done for all Members. This appears to be because of the limited information that is revealed by such a check. A limited number of Councils have, despite these limitations, adopted a policy to conduct such checks. It is, therefore, a matter of local choice by councils.
- 5.9 Should Council resolve to conduct “basic checks” in respect of all Members, this could be done by way of inclusion in the Councillors’ Code of Conduct of a provision that all Members will consent to such a check being done, will provide such information as the Council may reasonably require to enable such checks to be done, will provide any certificate issued by the DBS to the Monitoring Officer and will consent to the contents of the certificate being disclosed to the their party leader, if the Member is part of a party group, or to the Chief Executive, if the Member is an Independent Member, to enable the party leader, or the Chief Executive in respect of an Independent Member, to determine, after consultation with the Monitoring Officer and the Independent Person, what actions may be appropriate to safeguard children and vulnerable adults.

5.10. It is suggested, therefore, that an appropriate amendment to the Councillors' Code of Conduct to effect a requirement for a "basic check" being undertaken in respect to all Members, could be the insertion of a new paragraph 2.10 at the end of Section 2 of the Code, which deals with general obligations, in the following terms:

"2.10. You must:

- (a) consent to the Council making an application to the Disclosure and Barring Service on your behalf for the issue of a certificate of criminal conviction (basic check) and, if you hold portfolios relating to vulnerable adults or children, for the issue of an enhanced criminal record certificate (enhanced check), and to renewal of such checks not more frequently than once in any municipal year, whilst you remain a Member;**
- (b) provide to the Head of Democratic Services within 7 days of a request, such information as may be required to enable the Council to make such an application;**
- (c) such co-operation as may reasonably be required by the Head of Democratic Services to monitor the progress of any application lodged with the Disclosure and Barring Service by the Council on your behalf;**
- (d) provide to the Monitoring Officer, within 7 days of receipt, any certificate received by you from the Disclosure and Barring Service pursuant to any application made by the Council on your behalf;**
- (e) consent to the Monitoring Officer disclosing to the leader of your party group, or to the Chief Executive if you are an independent Member, the contents of the certificate received from the Disclosure and Barring Service, to enable the leader of your party group, or the Chief Executive in the case of an independent Member, to determine, after consultation with the Monitoring Officer and the Independent Person, what action may be appropriate to safeguard children and vulnerable adults;**
- (f) you will comply with any action determined by your group leader or the Chief Executive to be appropriate; and**
- (g) you consent to the fee payable in respect of such an application being deducted from your Members' allowance."**

5.11 Failure by a Member to observe a provision in the above terms would be enforceable as a breach of the Councillors' Code of Conduct.

5.12 Democratic Services will arrange for the above process to commence as necessary after elections. Group Leaders (and/or the Chief Executive, as above) will be in a position to act on these results once members have provided their returned certificates as above. The timeline for this cannot be fixed as the process sits outside of SBC. There is no restriction on usual Council business continuing while this process is underway.

- 5.13 Council is advised that it is possible that a challenge might be raised to an amendment of the Councillors' Code of Conduct in the above terms based on the right to respect for private life and correspondence contained in Article 8 of the European Convention on Human Rights. Such right is, however, subject to interference such as in accordance with law is necessary in a democratic society in the interests of public safety, protection of health or morals or for the protection of the rights or freedoms of others. Such a challenge could therefore be met on such grounds.

6 Comments of Other Committees

The Member Panel on the Constitution considered the report at its meeting held on 15th September 2020.

The Audit and Corporate Governance Committee considered the report at its meeting held on 10th December 2020 and recommended that the Councillors' Code of Conduct, in the terms set out at paragraph 5.10 of this Report, be amended to include provision to make "basic" checks on all Councillors and "enhanced" checks on Councillors who hold portfolios relating to vulnerable adults and children, with the Disclosure & Barring Service ("DBS"), and for any fees payable to the DBS for making checks to be met from the respective Councillors' allowances. The Committee also agreed to recommend that the changes be implemented from the municipal year 2021.

7 Conclusion

The Council have no powers to procure a "standard check", an "enhanced check" or an "enhanced check with barring list(s)" with the DBS in respect of all Members, but only in respect of Members having portfolio responsibilities involving work with children or vulnerable adults. The Council may, however, procure "basic checks" against all Members with their consent by way of a provision in the Councillors' code of Conduct in the terms set out above.

8 Appendices

None.

9 Background Papers

Current council policy on DBS checks for Members