

COUNCILLOR CONDUCT COMMITTEE

21 FEBRUARY 2024

DISCLOSURE AND BARRING CHECKS FOR COUNCILLORS

Report from/Author: Bhupinder Gill, Assistant Director Legal and Governance

Summary

The report seeks the Committee's views on undertaking Disclosure and Barring checks on elected Members and the breadth of those checks.

1. Recommendations

1.1 The Committee are requested to:

- 1.1.1 Approve the conducting of enhanced Disclosure and Barring Checks on Councillors who are appointed to relevant member bodies (inclusive of substitutes).
- 1.1.2 Approve the list of bodies/committees set out in paragraph 3.9 below, as relevant bodies.
- 1.1.3 Delegate authority to the Assistant Director of Legal and Governance in consultation with the Leader of the Council and the Director of People and Deputy Chief Executive to review and update the list of relevant bodies.

2. Budget and policy framework

- 2.1. The decision is within the Council's policy and budget framework including the Council Plan. The undertaking of such checks will support building of confidence in our elected Members and the governance systems adopted by the Council.

3. Background

- 3.1. Councillors are elected to office following a process of nomination and election by constituents to a public office. The eligibility requirements for standing for this public office are very broad and have few restrictions. Once elected, appointments to specific roles (i.e. cabinet and or committees) follows a nomination process by the political groups and formal election by the Council, normally at its annual meeting. Unlike applications for paid employment, there are no formal academic qualifications, or other character suitability criteria or regulatory body oversight. Appointments are based on an individual's

preference and experience in the subject matter, and ultimately a democratic choice.

- 3.2. There are some roles to which Members are appointed that provide them with access to sensitive material about individuals and/or contact with vulnerable members of the community.
- 3.3. Mr Simon Bailey conducted an Independent Review of the Disclosure and Barring Regime (which reported on 18 April 2023) at the behest of the Home Office. That review found that,

There is no uniformity of practice among councils in relation to obtaining criminal record checks for safeguarding purposes. When a child comes into care, the council becomes the Corporate Parent. Put simply, the term 'Corporate Parent' means the collective responsibility of the council, elected members, employees, and partner agencies, for providing the best possible care and safeguarding for the children whom they look after.

It appears that some councils obtain higher level (enhanced) criminal record checks for all elected members regarding them all as falling within the term corporate parent. However, it is my understanding that this concept does not confer eligibility. Others obtain the checks in respect of councillors prior to their appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults to assess their suitability for involvement in those decisions. It appears that there are some councils which do not obtain DBS checks at all.

For the reasons referred to above, I have been unable to establish the figures for those that do and those that don't. In my judgment, this lack of uniformity in approach is in need of correction. Put simply, if a number of councils properly regard such checks as necessary, having regard to their duty to safeguard, how can the need for the checks not apply to all councils having the same duty? That said, it does not seem to me that it is necessary that enhanced checks should apply to all councillors, but rather to those who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults.

- 3.4. The Council has received a letter dated 18 January 2024 from the Minister for Local Government at the Department for Leveling Up Housing and Communities. This is attached and marked as **Appendix 1**.
- 3.5. The letter sets out a recommendation by Mr Simon Bailey following his review,

“... an enhanced criminal record check is made mandatory for all councillors in Unitary and Upper Tier Authorities who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults.”

- 3.6. The recommendation noted that to make this mandatory would require legislation and therefore there would be some inevitable delay. However, whilst the legislative processes are being undertaken, he recommends that authorities adopt this procedure as best practice.
- 3.7. We wait to see how the legislation is drafted as to the:
- timing of the checks
 - the status of appointees whilst awaiting the results of the checks
 - implications for appointees who receive unsatisfactory results and
 - the frequency on undertaking them.
- 3.8. Since the adoption of the checks at this stage will be voluntary and Members have already been appointed to various roles it is suggested that the following protocol is adopted:
- a) Relevant Members are informed that an enhanced DBS check will be undertaken;
 - b) Whilst the results are awaited, the Member is allowed to continue in their roles;
 - c) If the check reveals a positive disclosure (whether it is accepted by the Member or it is challenged or not disclosed by the Member), the result is:
 - i. Shared with the relevant Group Whip (where the Member is in a political group), the Member and Monitoring Officer via a Disclosure Discussion Form
 - ii. The Member agrees to undertake no further participation in the relevant body/committee until such time as the result is checked
 - iii. Once checked and if the results still remain unsatisfactory, the Group Whip will replace the affected member on the body/committee within 14 days and inform the Monitoring Officer and the Chief Executive.
- 3.9. Relevant committees / bodies.
It is proposed that the initial list of relevant committees/ bodies includes the following:
- Cabinet
 - Children and Young People Overview and Scrutiny Committee
 - Health and Adult Social Care Overview and Scrutiny Committee
 - Health and Wellbeing Board
 - Children's Panel.
 - Adoption Panel
 - Corporate Parenting Board
 - Fostering Panel
- 3.10. The political groups will also need to factor in sufficient Members undertaking DBS checks to allow for substitute Members to attend the meetings specified in paragraph 3.9 of the report.

4. Options

- 4.1. Option 1 - Keep the current status quo and not undertake the checks until the legislation is in place. The checks required will incur a modest fee which is not currently budgeted for. Failing to undertake the checks will be compliant with current legislation but it will not be viewed as compliance with best practice and there is an unknown level of risk, however remote, to vulnerable members of our community.
- 4.2. Option 2 - Undertake the checks. The cost of the checks will be undertaken by HR and absorbed within the Members' Services budget and savings elsewhere will be made to remain within the overall approved budget. This will ensure that the Council is complying with best practice and be best placed to comply with the legislation when enacted.

5. Advice and analysis

- 5.1. The committee is recommended to approve the undertaking of the checks on voluntary basis and adopt the protocol set out above (para. 3.8).

6. Risk management

- 6.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk Rating
Inappropriate members have access to sensitive material and knowledge of vulnerable individuals	Inappropriate access to information and or knowledge of vulnerable individuals.	1. Members need to show a need to know when accessing information and thus access to information is restricted to that which is required to perform the role. 2. Members will be accompanied by an officer when they speak with vulnerable individuals.	CIII

For risk rating, please refer to the following table.

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

7. Consultation

- 7.1. The Director of People and Deputy Chief Executive has been consulted and is supportive of the proposals.

8. Climate change implications

- 8.1. [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.
- 8.2. There are no direct implications arising from this report.

9. Financial implications

- 9.1. The cost of an Enhanced Disclosure and Barring check is £54 per individual for the initial check, and £13 for subsequent annual checks. The membership of the relevant committees / bodies (including co-opted members) set out at 3.9 of this report totals 48 individuals, excluding any requirement for substitute members to be checked. As such, this report assumes that a number equivalent to the total of all Medway Council elected Members i.e. 59 be checked. This would cost £3,186 in the first year and £767 in subsequent years.
- 9.2. There is no current budget for this new burden, however as the total cost is negligible in the context of the Council's overall budget, officers are confident the cost can be met from savings elsewhere in the Member services budget and/or will be addressed in the budget build for 2025/26 and beyond.

10. Legal implications

- 10.1. These are contained within the body of the report.

Lead officer contact

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Appendices

Appendix 1 - Letter from Minister for Local Government, 18 January 2024

Background papers

[The Independent Review of the Disclosure and Barring Regime, Simon Bailey, February 2023](#)