

Corporate Governance and Standards Report  
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## Criminal Records Checks on Councillors

### Executive Summary

This report sets out the results of a review by officers into whether Guildford Borough Councillors are eligible under current rules for criminal record checks by the Disclosure and Barring Service (DBS).

The outcome of the review is that there is currently no legal basis upon which the Council can require such checks of its councillors by the DBS.

However, the DBS has confirmed that it is possible for a councillor to apply for a basic disclosure criminal record check using Disclosure Scotland, which is a Scottish government agency. Disclosure Scotland runs checks against the UK-wide Police National Computer, the basic level of which will disclose unspent criminal convictions.

### Recommendation:

The Committee is asked to note the position in respect of the DBS and to agree to defer consideration as to whether it would be appropriate and proportionate to ask councillors to apply for a basic disclosure criminal record check using the service provided by Disclosure Scotland to the new Council following the local elections in May.

### 1. Purpose of Report

- 1.1 To note the outcome of a review into whether the Council can legitimately carry out criminal record checks of its councillors by the DBS.

### 2. Background

- 2.1 Under paragraph 1 (d) of Section 80 of the Local Government Act 1972, a person shall be disqualified from being elected or being a member of a local authority if he:

*“has within five years before the day of election or since his election been convicted in the United Kingdom, the Channel Islands or the Isle of Man of*

*any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.”*

- 2.2 All candidates for election to any local authority are required to confirm in their consent to nomination form that, to the best of their knowledge and belief, they are not disqualified from being elected by reason of any disqualification - including a disqualification under Section 80 (1) (d) referred to above.
- 2.3 We are not required to do anything other than take a candidate's confirmation that they are not disqualified at face value. There is no requirement for a candidate to provide evidence (e.g. a criminal records check) that they are not disqualified under this part of Section 80.
- 2.4 The review was prompted by the receipt of a freedom of information (Fol) request in August 2014 which asked for a 'list of all past criminal convictions of, and any criminal charges currently pending against, members of the GBC Executive team.'
- 2.5 Although the Council's response to the Fol request was that it did not hold the information requested, the Monitoring Officer accepted that the request raised important issues of concern around the governance of the Council. The Monitoring Officer therefore undertook to take steps to review our current arrangements by making enquiries of other councils to understand the extent to which they require and maintain information regarding councillors' criminal convictions.
- 2.6 In October 2014, we enquired of other district councils in Surrey as to whether they:
  - (a) held information on councillors' criminal charges and convictions;
  - (b) sought information from councillors or from the DBS on those convictions;
  - and
  - (c) had a policy on this
- 2.7 None of the Surrey districts held such information, nor sought it from councillors or from the DBS. The background on the legal position in respect of criminal record checks on councillors set out in the paragraphs below would explain why other district councils do not have their councillors DBS checked.
- 2.8 In 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into what is now the Disclosure and Barring Service (DBS). The DBS carries out criminal record checks for specific professions, employment, offices, works and licences under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
- 2.9 Whilst it is routine and appropriate for employers to check the criminal record history of people working, or seeking to work, in certain positions, especially those that involve working with children or vulnerable adults in specific situations, the position in respect of similar checks on councillors is not so clear or straightforward.

- 2.10 The practice of carrying out DBS checks on councillors has almost exclusively been undertaken by councils with education and adult social care responsibilities (for example, county councils, unitaries, metropolitan borough councils and London boroughs). The reason for this is to ensure that members who have regular contact, or are in a position of authority over those with regular contact, with children or vulnerable adults in their official capacity do not present a risk to those persons.
- 2.11 Some of these councils have chosen to require criminal record checks of all of their councillors, whilst others have been more selective by requiring checks of councillors only if they undertook certain roles (e.g. in Education or Social Care), or had direct unsupervised contact with vulnerable clients.
- 2.12 The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This had the effect of reducing significantly the number of positions and circumstances in which persons would need to be the subject of a criminal records check. The provisions 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.
- 2.13 The 2012 Act amended the definition of “regulated activity” under the Safeguarding Vulnerable Groups Act 2006. Previously, the definition specifically included councillors who “discharged functions” relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This was understood by many of the councils referred to in paragraph 2.10 above to include all executive members, relevant scrutiny members and those serving on fostering and adoption panels. This definition has been formally repealed so none of the councillors in the above roles, with the exception of those involved in fostering and adoption panels, are now legally required to undergo a criminal records check as part of assessing their suitability for such roles.
- 2.14 The changes in legislation effectively mean that there is now no legal requirement for any councillor to undergo criminal record checking by virtue only of their position as an elected member. Advice on this point was sought from the DBS. They have confirmed that:
- “There is no eligibility for the role of councillor to undergo a DBS check, unless they are specifically undertaking specified activities with children or vulnerable adults. Just because there is a piece of legislation that states a councillor should not have convictions less than five years old, this does not mean there is entitlement for a DBS check.”*
- 2.15 The “specified activities” referred to above are referred to as “regulated activities” in the legislation.
- 2.16 With regard to children, regulated activities are unsupervised activities involving teaching, training, instructing, caring for or supervising children, or providing advice/guidance on their well-being, or driving a vehicle only for children – if done

regularly; and relevant personal care (even if only done once); registered child-minding and foster caring.

- 2.17 With regard to adults, regulated activities involve the provision of healthcare or personal care by healthcare professionals; the provision of social work by social care workers; assistance with cash, bills or shopping or the conduct of their personal affairs; conveying persons because of their age, illness or disability even if only done once.
- 2.18 Clearly, Guildford Borough councillors are not involved in any of these regulated activities by virtue of their role as borough councillors.

### **3 Disclosure Scotland**

- 3.1 In their response to our enquiry, the DBS indicated that the only check that they were aware we could ask to be carried out is a basic level of check, which would reveal unspent convictions only. Upon further enquiry, DBS informed us that Disclosure Scotland undertakes Basic Disclosure checks even though it is a Scottish Government agency.
- 3.2 A Basic Disclosure (termed as a 'criminal conviction certificate' in Part V of the Police Act 1997) is the lowest level of Disclosure and, as there is no eligibility check (unlike a DBS check), is available to anyone in the UK for any purpose. It contains details of convictions considered unspent under the Rehabilitation of Offenders Act 1974 or states that there are no such convictions. This type of Disclosure is only issued to the applicant.
- 3.3 Whilst, on the face of it, a basic disclosure check may provide some assurance that a councillor is not disqualified from holding office, it cannot provide 100% assurance. For example, it would be possible theoretically for a councillor to have a relevant conviction that becomes spent during the five year period prior to their election which would technically disqualify them but would not show on a basic disclosure check.

### **4. Financial Implications**

- 4.1 If the new Council agreed to ask all 48 councillors to apply for a basic disclosure check and to reimburse them, the cost would be £1,200, for which there is currently no specific budget. There are no other financial implications arising from this report.

### **5 Legal Implications**

- 5.1 These are explained in section 2 of this report.

### **6 Human Resource Implications**

- 6.1 If the new Council agrees to conduct basic disclosure checks, they would need to be co-ordinated by the democratic services team to ensure that councillors understand what they need to do. There are no other human resource implications arising from this report.

## **7 Conclusion**

- 7.1 Given the legal position outlined in this report on the extent to which councillors can now be checked for criminal records and the advice received from the DBS, it is clear that the Council is unable to take this matter further with the DBS.
- 7.2 The Committee is asked to note the position as described in this report and agree to ask the new Council, following the local elections in May, to consider whether it is reasonable and proportionate to ask all councillors, or councillors performing specified roles, to apply to Disclosure Scotland for a basic disclosure check.

## **8 Background Papers**

None

## **9 Appendices**

None