

REPORT TITLE: CONSIDERATION OF MOTION: SAFER RECRUITING COUNCIL

25 JANUARY 2018

REPORT OF PORTFOLIO HOLDER: Cllr Stephen Godfrey, Portfolio Holder for Professional Services

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WARD(S): ALL

PURPOSE

Council was presented with a Motion on 11 October 2017, in respect of becoming a Safer Recruiting Council incorporating the commitment to undertake Disclosure and Barring Service checks for staff and members in continued contact with members of the public.

This matter was referred to Personnel Committee for consideration. This paper sets out the response to that motion.

RECOMMENDATIONS:

1. That the Council's recruitment processes are noted and acknowledged as meeting the requirements of a 'Safer Recruiting' Council in respect of Disclosure and Barring Service checks for relevant staff.
2. That Members note that there is no statutory provision for the Council to undertake criminal records checks for elected members through the Disclosure and Barring Service.

## IMPLICATIONS:

### 1 COUNCIL STRATEGY OUTCOME

- 1.1 Winchester City Council is committed to safer recruiting practices and has a duty of care to ensure that those working directly with vulnerable groups are suitable to do so.

### 2 FINANCIAL IMPLICATIONS

- 2.1 There are no direct financial implications arising from this report.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Children Act 2004, places a duty on organisations to safeguard and promote the well-being of children and young people. This includes the need to ensure that all adults who work with or on behalf of children and young people in these organisations are competent, confident and safe to do so.
- 3.2 The Council is a Registered Person for the purpose of undertaking criminal record checks. Regulations require that a Registered Person must comply with any code of practice issued. The current Code of Practice for Disclosure and Barring Service Registered Persons states that employers ensure they are legally entitled to request a DBS check and use all reasonable endeavours to ensure that they only submit criminal records check applications in accordance with the legislation. Failure to comply could result in the Council having its licence revoked.
- 3.3 As detailed in this report, the Council is only permitted to require criminal record checks for specified roles and activities. The Disclosure and Barring Service provide guidance upon the eligibility for DBS checks and the role of 'elected member' for a district Council is not a role which would require such a check and therefore such checks should not be undertaken.

### 4 WORKFORCE IMPLICATIONS

- 4.1 There are no specific workforce implications arising from this report.

### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 There are no property and/or asset implications arising from this report.

### 6 CONSULTATION AND COMMUNICATION

- 6.1 There are no formal consultation or communication issues arising from this report. The Portfolio Holder for Professional Services and the Chair of Personnel Committee have been briefed informally on the matters included in this report.

### 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 There are environmental considerations arising from this report.

## 8 EQUALITY IMPACT ASSESSEMENT

8.1 There are no equality impact assessment issues arising from this report.

## 9 RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Financial / VfM: Costs associated with litigation should the Council undertake DBS checks which are outside of the statutory provisions.</i>	Not to undertake DBS checks for members.	
<i>Legal: The Council is not permitted to undertake a check unless it complies with the eligibility criteria.</i>	Not to undertake DBS checks for members.	
<i>Innovation</i>		
<i>Reputation The Council is not permitted to undertake a check unless it complies with the eligibility criteria</i>	Not to undertake DBS checks for members	
<i>Other</i>		

10 SUPPORTING INFORMATION:

- 10.1 At Council on 11 October 2017 the following Motion was presented:
- 10.2 To consider the following Notice of Motion to be moved by Councillor Porter and seconded by Councillor Thompson, under Council Procedure Rule 9: "In order to protect the public, and show our strong commitment to our staff, this council will become a 'safer recruiting council'. Becoming a 'Safer Recruiting' Council brings about a new culture of Good Practice. All job advertisements will advertise this fact, and that DBS checks may be undertaken if staff or any person who is paid by Winchester City Council are in continued contact with members of the public. This means that staff and councillors who are working closely with the public on very personal matters will be fully informed of the safeguarding issues of which they should be aware and DBS checks will be carried out at the start of every councillor's term of office."
- 10.3 The Government Offices for the English Regions published guidance in 2009 setting out the responsibilities of local authorities in respect to safeguarding children; this guidance introduced the notion of "safer recruitment practice".
- 10.4 The 2009 Guidance requires the Council, and similar organisations, to have clear processes in place to prevent those whose conduct may bring into question their suitability to work with children. The Interim Head of Human Resources is satisfied that the Council's Recruitment and Selection Policy complies with these requirements.
- 10.5 As part of their statutory duty to ensure the effectiveness of what is done by agencies, LSCBs undertake annual monitoring of compliance with Section 11 of the Children Act 2004. Amongst other areas, the *Keeping Children Safe* audit (the "S11 Audit") considers the Council's effectiveness as a "Safer Recruiting Council."
- 10.6 The most recent S11 Audit of Winchester City Council was completed in November 2017. Overall, the panel were "impressed with the range of good practice examples included within the submission and felt assured that the council has a clear understanding of how children can be safeguarded." They commended the work that has been undertaken following the 2016 Section 11 audit and were assured that areas for improvement have been addressed. In particular, the Council's decision to implement a safeguarding clause across existing job descriptions reflects best practice.
- 10.7 The Notice of Motion considered by Council on 11 October 2017 also sets out that councillors should also be subject to a DBS check.
- 10.8 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 they have "within five years before the day of the election been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had 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.”

- 10.9 All candidates for election to any local authority are required to confirm that, to the best of their knowledge and belief, they are not disqualified from being elected by reason of any disqualification – including any disqualification under Section 80 (1) (d) referred to above.
- 10.10 There is no requirement on the authority to do anything to verify the candidate’s declaration; this would include any requirement to undertake a criminal record check.
- 10.11 The Disclosure and Barring Service (DBS) carries out criminal records checks for specific professions, employment and offices under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. While it is routine and appropriate for employers to undertake such checks for people working with or seeking to work with vulnerable groups, the position for elected members is not as straightforward.
- 10.12 Nationally, the practice of undertaking DBS checks for councillors has almost exclusively been undertaken by councils with education and adult social care responsibilities. The reason for this is to ensure that Members who are in a position of authority over those who work with children or vulnerable adults in their official capacity do not present a risk to those groups.
- 10.13 The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This reform significantly reduced the number of positions and the circumstances in which persons would need to be the subject of a criminal records check. The provisions now only apply to those who have a close and unsupervised contact with children and/or vulnerable groups.
- 10.14 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 social care of vulnerable groups for two or more days in any 30 day period. This definition has been formally repealed so that only those Members with responsibility for fostering and adoption panels are now legally required to undergo a criminal records check; as Members will be aware, this function is not performed by a district council and would therefore not apply to Winchester City Council.
- 10.15 The changes to legislation mean that there is now no legal requirement for any district councillor to undergo a criminal record checking by virtue only of their position as an elected member.
- 10.16 The DBS publish an online “eligibility tool” to enable organisations to ensure that the appropriate level of DBS check is undertaken. While it is recognised that Members engage with individuals on a regular basis and discuss sensitive matters with them, having completed the eligibility assessment using

the online tool, Members at district council level do not meet the statutory eligibility criteria to undertake a DBS check.

- 10.17 South East Employers have confirmed that elected Members at district council level are not eligible for a DBS check as it is extremely unlikely that the position would meet the statutory eligibility criteria.
- 10.18 Other district councils have considered introducing DBS checks for elected Members and have been canvassed for their views. The table below summarises the responses received:

<b>Council</b>	<b>Response</b>
Basingstoke	Considered and rejected
Eastleigh	Considered and rejected
Fareham	Considered and rejected
Guildford	Considered and rejected
Havant and East Hampshire	Considered and rejected
Test Valley	Considered and rejected

- 10.19 At a county level, all elected Members are subject to an enhanced DBS check because those holding the office of Executive Member (Portfolio Holder) with responsibility for Adult Services, Public Health or Children's Services are subject to disclosure due to the County Council's statutory safeguarding duties. Hampshire County Council resolved that all Members would be subject to an enhanced DBS check because Executive Members could potentially change during the municipal year.

- 10.20 The different types of DBS checks are:

- (a) Basic disclosure: Any individual can apply for a basic disclosure. A basic certificate will provide details of unspent convictions only.
- (b) Standard Check: A standard certificate will include details of spent and unspent convictions, cautions, reprimands and final warnings.
- (c) Enhanced Check: An enhanced certificate includes the same information as the standard check, plus any additional information held by local police that is reasonably considered relevant to the role being applied for.

- (d) Enhanced Check with check of Barred Lists: This provides the same information as an Enhanced Check, and also confirms whether the individual's name appears on the "barred lists".

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

NONE

Other Background Documents:-

Government Offices for the English Regions: *Guidance for Safer Working Practice for Adults who Work with Children and Young People: 2009*

Home Office: *Revised Code of Practice for Disclosure and Barring Service Registered Persons: 2015*

*Keeping Children Safe Section 11 Audit 2017*

APPENDICES:

NONE