

**TO: EMPLOYMENT COMMITTEE: 10 MAY 2016
GOVERNANCE AND AUDIT COMMITTEE 29 JUNE 2016
COUNCIL 13 JULY 2016**

**EMPLOYEES CODE OF CONDUCT AMENDMENT
Director of Corporate Services – Legal/Human Resources**

1 PURPOSE OF DECISION

- 1.1 This report seeks the endorsement of the Council to an amendment to the Employees Code of Conduct (“the Code”) introducing a requirement for all Council employees to declare the existence of criminal charges, cautions and convictions to their directorate lead for HR or the Chief Officer :HR

2 RECOMMENDATION

- 2.1 **That the provision outlined in paragraph 5.5 is added to the Employees Code of Conduct**
- 2.2 **As a consequence to the proposed changes above, an additional offence (of failing to disclose) as detailed in 5.8 is added to the Disciplinary Procedure as an instance of potential serious misconduct.**
- 2.3 **That recommendation 2.1 and 2.2 have retrospective effect from 1 July 2015 (ie from the point at which DBS rechecks ceased to be undertaken)**

3 REASONS FOR RECOMMENDATION

- 3.1 The recommendation follows a decision by Corporate Management Team in July 2015 to review and amend the practice of carrying out three yearly Disclosure and Barring Service (“DBS”) rechecks in respect of posts where there is no statutory duty to do so. However, as a result, the proposal of a requirement on all employees to disclose any new charges, cautions or convictions is expected to mitigate any risks thereby arising from discontinuing DBS rechecks on staff who previously were subject to these.
- 3.2 The requirement for disclosure allows the Council to consider at an early stage the potential impact on the employee’s role and provides an opportunity to safeguard the Council’s reputation.

4 ALTERNATIVE OPTION CONSIDERED

- 4.1 Do nothing to mitigate the identified risk. However, whilst this is an option it is not advisable. The likelihood (based on past experience) of an officer being charged cautioned or convicted is low but the impact could be very high. Therefore the recommendations contained within this report seek to mitigate this risk.
- 4.2 Whilst it is recommended that that the requirement to disclose is applied retrospectively, the alternative would be to enforce the new policy from the date it is agreed by Employment Committee. This does increase the risk slightly.

5 SUPPORTING INFORMATION

Unrestricted

- 5.1 Currently, DBS checks are carried out on prescribed categories of employees whose duties require contact with young people and vulnerable adults either directly or via access to sensitive personal data. The checks take place upon an individual commencing employment with the Council and where s/he moves to a new and different role within the organisation.
- 5.2 The Council's position on which posts required DBS checks was reviewed by Corporate Management Team in July 2015 at which point they considered their current approach to rechecks.
- 5.3 Whilst there is no statutory requirement to re-check in the majority of cases, it does exist for some non-employment cases ie taxi licensing and fostering/adoption and there is no suggestion that the rechecks should stop for those areas. There is no expiry date on a DBS Disclosure if the person remains in the same type of employment with the same employer. Increasingly Councils are redefining their position on rechecking because the landscape has changed over the last few years and the CQC and Ofsted no longer require it. The majority of the Berkshire Authorities do not perform automatic rechecks. There is a budgetary saving resulting from not undertaking rechecks which has been included in the 2016/17 budget.
- 5.4 In deciding whether to continue with re-checks one of the issues for consideration by CMT was the Council's appetite for risk; it was clear that the risk to vulnerable adults and children would be very low were rechecks to be discontinued. It is true to say that there is an excellent network of information sources available to the Council which have, in the past, readily identified any occasion when an employee has fallen foul of the law. These include the local press, local police contacts, work colleagues, social networks, the Magistrates Court system etc. Therefore if an employee did commit any offence, particularly one which might prove problematic to their continued employment in a Regulated Activity, it is clear the Council could find out very quickly and be able to act accordingly.

During the time the Council has performed regular rechecks, there is no record of there having been any employee whose employment has been terminated due to new offences being detected through this process. This must inevitably lead to the conclusion that whilst the current approach is extremely risk-averse, it is committing the Council to significant expense at a time of restricted budgets with little evidence that it makes any material impact.
- 5.5 However CMT did agree that in order to mitigate any potential risks the Employee Code of Conduct should be amended to require employees to declare any criminal charges, cautions and convictions imposed upon them subsequent to their appointment. It is considered that whilst the original DSB recheck procedure applied specifically to those staff previously subject to pre employment checks, the recommendation should extend to all Council employees as it would be difficult to legally justify limiting the application of any provisions within the Employee Code to discrete categories of staff.
- 5.6 Cautions are issued at police stations for less serious offences where an offender admits guilt. The inclusion of cautions is consistent with the system of DBS checks where they are also referenced as part of an individual's criminal record.

- 5.7 It is recommended that employees should also be required to disclose the fact that they have been charged with an offence at a time when they are employed by the Council. Such a requirement provides safeguards for the Council in situations where the Crown Prosecution Service has concluded that it has sufficient evidence to prosecute the employee. In these circumstances the requirement for disclosure would provide a safeguard for the Council against the employee placing individuals or Council systems at risk. Examples would include employees charged with offences of a violent or exploitative nature who are employed by the Council in a caring capacity or those charged with financial offences that have access to Council financial systems. It must be emphasised here that disclosure in such circumstances would not lead to automatic censure. Indeed in some cases it may be entirely appropriate that the Council takes no further action, disciplinary or otherwise. The rationale behind the proposal is to create a framework which places the obligation on the employee to disclose, enabling the Chief Officer to undertake a risk assessment (with HR/Legal advice where appropriate) to determine whether or not the individual can continue in their role pending the conclusion of criminal proceedings. An appropriate response in such cases could include moving the individual temporarily to another role, suspension or in exceptional cases disciplinary action.

The suggested wording is as follows:

Reporting of Criminal Charges and Convictions

Where an employee is charged by the Police for any offence or convicted in a court of law or issued with a caution on any matter that occurs during or outside of their work then they must report this immediately to their directorate HR lead or the Chief Officer:HR.

A charge, conviction or caution for any offence may result in disciplinary proceedings being taken against the employee where, in the opinion of the Council, it;

- ***affects, or is likely to affect, the suitability of the employee for the position in which he/she is employed, or***
- ***brings the Council into disrepute, or***
- ***could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the employee.***

NB. There is no requirement for an employee to report to the directorate lead for HR or Chief Officer HR where they have received a fixed penalty notice for any offence, eg speeding offences, parking offences etc.

- 5.8 In order to underpin this approach, it is intended this is added to the list of Serious Misconduct outlined in the Council's Disciplinary Procedure specifying "the failure to disclose to the directorate lead for HR or the Chief Officer:HR any charge, caution or conviction (not including fixed penalty notices) which affects or is likely to affect the employee's suitability for the position in which they are employed" as recommended in 2.2

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- 5.9 Such a provision is both necessary and proportionate in order to give the proposals the necessary degree of authority to ensure that employees adhere to the requirement. Proportionality will be achieved by virtue of employees having the safeguards inherent in the Council's HR processes and in Employment law.
- 5.10 Where an employee fails to make a disclosure the disciplinary procedure would only be engaged where the criteria set out in paragraph 5.8 above is satisfied and the appropriate advice has been sought and received.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 Nothing to add to the report.

Other Officers

- 6.3 The Chief Officer: Human Resources comments are included in the report.

Equalities Impact Assessment

- 6.4 Not relevant

Strategic Risk Management Issues

- 6.5 Implementation of the proposal will serve to mitigate any risk arising from the fact that the Council no longer undertakes DBS rechecks except in those limited cases where there is a statutory requirement to do so.

7 CONSULTATION

Principal Group Consulted

- 7.1 The recommendation in this report will be considered by by the Local Joint Committee and both the Employment Committee and Governance and Audit Committee

Method of Consultation

- 7.2 Through this report.

Background Papers

None

Contact For Further Information

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