

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 16 July and 26 September 2024. Attendances:

Councillor Glazier (Chair) (2)

Councillors Bennett (2), Bowdler (2), Collier (2), Denis (1) and Tutt (2) and Cross (1)

1. Flexible Retirement Policy

1.1 The Governance Committee considered a report at its meeting on 25 June 2024 proposing the implementation of a Flexible Retirement Scheme. The report noted a number of key principles, including that the implementation of the Scheme would present no additional costs to the Council. A link to the report can be found [here](#).

1.2 The Governance Committee considered a subsequent report at its meeting on 16 July 2024. The East Sussex Pension Team further advised that whilst the LGPS regulations permit for an actuarial reduction to be applied to a retiree over age 55 years and under 60 years, who has satisfied the '85 year rule' in circumstances of voluntary retirement, they do not allow employers to levy such a reduction in circumstances of flexible retirement. Instead, where flexible retirement is awarded to an individual prior to age 60, those benefits that meet the '85 year rule' would be payable without reduction. As a result, this would generate a revenue cost to the Council.

1.3 Each individual case will have a range of unique factors, for example, age, length of service, number of years contributing to the LGPS etc. and as such, any costs arising will need to be calculated on an individual basis. The previous report noted the requirement for a business case to be agreed, demonstrating how the arrangement would support the business needs of the service. As mitigation for the issue identified above, it is now proposed that the business case requirements are amended to include consideration of any revenue costs arising out of the proposed flexible retirement arrangement. Full details of the costs will need to be set out, along with an explanation as to how and why the proposed retirement represents best value for money from an economy, efficiency and effectiveness perspective.

1.4 It was previously proposed that as the consideration was in relation to the needs of the service and business impact, approval to a flexible retirement arrangement would only require the agreement of the service Assistant Director. In light of the issue now identified, the approval requirements will be changed to include the Chief Finance Officer and Assistant Director, HR&OD, in line with all other HR related business case approvals.

1.5 The draft 'Flexible Retirement Policy' will need to be amended to reflect the correct position. The proposed amendments are highlighted on the draft 'Flexible Retirement Policy' attached as Appendix 1 to this report.

1.6 Notwithstanding the issue now identified for some flexible retirement cases to have the potential to incur revenue costs to the Council, there is still value in having a flexible retirement scheme as part of the suite of flexible working options for staff approaching retirement age. In circumstances where business needs can continue to be met by a flexible

GOVERNANCE

retirement arrangement and any costs have been subject to a value for money test, the scheme can retain skills and help services plan resources into the future. A flexible retirement scheme has the potential to provide a degree of security and stability for both employees and services particularly in the context of a changing operating environment.

1.7 The Committee recommends the County Council to:

✧ approve (1) the implementation of a flexible retirement scheme for employees (excluding those on Teaching terms and conditions) as set out in Appendix 1 of the report; and

(2) that the Local Government Pension Scheme Employer Discretions Policy is updated accordingly to allow for this.

2. DBS Checks for Members

2.1 In 2022 the Government announced an Independent Review of the Disclosure and Barring Regime. The purpose of the review was to provide assurance to Ministers on the effectiveness of the Disclosure and Barring Service regime in safeguarding children and vulnerable adults. The subsequent review was published in 2023 and is attached at Appendix 2.

2.2 The review included consideration of the eligibility of local councillors for criminal record checks provided by the Disclosure and Barring Service ('DBS checks'). On this point the review made the following recommendation:

Recommendation 5: local councillors

That an enhanced criminal record check is made mandatory for all councillors in Unitary and Single 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. I accept that this would require legislation and therefore some inevitable delay, so I further recommend that these authorities are encouraged to adopt this procedure as best practice pending legislation.

2.3 The Minister for Local Government, subsequently wrote to the Leaders of all Unitary and Upper Tier Authorities in England urging enhanced DBS checks to be adopted as best practice for all Councillors being considered for appointment to any committee 'which discharges education or social services'.

Disclosure and Barring checks

2.4 The Disclosure and Barring Service (DBS) provides a procedure through which organisations may carry out criminal record checks relating to individuals who may, on behalf of the organisation, undertake work or hold positions or responsibilities which may bring them into contact with vulnerable persons.

2.5 When considering matters relating to criminal record checks, it should be kept in mind that Councillors are not required to undergo a DBS check by virtue of their role as a

GOVERNANCE

Councillor generally. The County Council must therefore take care not to seek too much information since, for example, an organisation can only ask for a check where the nature of the role makes it appropriate.

2.6 There are various levels of checks depending on the nature of the role:

Type of check	Description
Basic check	This check shows unspent convictions and conditional cautions. Cost: £18
Standard check	This checks for spent and unspent convictions, police cautions, reprimands and final warnings. Cost: £18
Enhanced check	This includes the same as the standard check plus any additional information held by local police (such as complaints or third party referrals) that is considered relevant to the role. Cost: £38.
Enhanced check with Barred List check	This is like the enhanced check, but includes a check of the two DBS lists of people barred from working with (1) children and (2) vulnerable adults. Cost: £38

2.7 A standard or enhanced DBS check can only be requested for specific roles, primarily those where there is direct contact with vulnerable people or access to confidential and sensitive information. A basic DBS can be requested for any role.

2.8 The Council's DBS Policy Statement (attached at Appendix 3) states that DBS Disclosures for Councillors fulfilling the roles set out below will be monitored by Business Administration and refreshed every 4 years. Disclosures are then sent to the individual. The unique reference number and date of issue of a Councillor's disclosure will be recorded as evidence of the check having been undertaken, but this will not indicate whether the check has resulted in a positive disclosure.

At its meeting in October 2017 the Council agreed that the roles set out below required an enhanced criminal record check:

- Members of the Fostering Panel
- Members of the Corporate Parenting Panel
- Lead Member for Children and Families
- Lead Member for Education and Inclusion, Special Educational Needs and Disability
- Lead Member for Adult Social Care and Health

2.9 Where a DBS check results in a positive disclosure (i.e. a criminal background or details that may be of concern) the Councillor would be requested to meet with the Chief Executive and Monitoring Officer to discuss the disclosure and its impact on their suitability to undertake certain roles. If the outcome of those discussions is that there should be a

GOVERNANCE

restriction in their role, then this would be additionally shared with the Member's group leader where relevant.

2.10 As part of the review of the Council's practice we have sought information as to the practices of other Councils:

Organisation	Approach	
	All Members	Specific Roles
Brighton & Hove City Council	None	Enhanced check
Hampshire County Council	Enhanced check	Enhanced check
Kent County Council	Enhanced check without Barred List check	Enhanced check with Barred List check
Surrey County Council	None	Enhanced check on Cabinet members and Chairs of Adults' and Children's Scrutiny Committee
West Sussex County Council	Standard check	Enhanced check on: <ul style="list-style-type: none"> • Chairman and Vice-Chairman of the County Council, • Regulation 44 Visitors • Cabinet Members for Children and Young People, Education and Skills, Adults and Health • Corporate Parenting Panel members • Foster Panel members

Matters for consideration

Corporate Parenting Panel

2.11 The Corporate Parenting Panel (CPP) monitors and ensures the well-being of children who are looked after by the Council (in children's homes or as fostered children). The Panel meets four times a year and is comprised of seven members.

2.12 Whilst members of the CPP are already required to undertake enhanced criminal record checks, no such requirement is in place for substitutes. It is recommended that each political group is asked to have a nominated substitute for the Panel and that they be required to undertake an enhanced criminal record check. In the event that a member of the CPP was not able to attend a meeting only the nominated substitute would be able to replace them at the meeting.

2.13 An alternative approach which has been adopted by some local authorities is to prohibit substitutes on their Corporate Parenting Panels. This would mean fewer councillors

GOVERNANCE

would be required to undertake an enhanced criminal record check, but risks the meeting being inquorate.

Discretionary Transport Appeal Panel

2.14 The Discretionary Transport Appeal Panel makes decisions on the award of transport assistance to local students. The Panel is comprised of three members and meets approximately nine times a year. Members of the Panel are not currently required to undertake enhanced criminal record checks however they have voluntarily agreed to be subject to an enhanced check. Given the nature of the issues it considers, it is inevitable that the Panel are provided with confidential information relating to families and their children and it is therefore recommended that Panel Members are the subject of an enhanced check.

Criminal Record checks for all Members

2.15 The Member Reference Group considered the specific roles of Members set out in this report earlier this year and agreed with the proposals that enhanced DBS checks should be required for substitutes for the Corporate Parenting Panel and for members of the Discretionary Transport Appeal Panel. The Reference Group also suggested that all Members should be required to undertake an enhanced check. The main reasons given in support of this view are:

- all Members have the potential to come into contact with vulnerable individuals via their roles in their local community.
- that members of the public would expect councillors, who hold a position of trust, to have a DBS check,
- DBS checks would offer a level of assurance to members of the public; and
- DBS checks for all councillors could help protect the Council's reputation.

2.16 As the table in 2.6 shows, some local authorities do have arrangements in place requiring all councillors to have criminal record checks. However, there is some variation in the type of DBS check which is applied. As set out in paragraph 2.10, Councillors are not required to undergo a DBS check by virtue of their role as a Councillor generally, and failure to agree to one would not debar them from being a Member of the authority. Putting in place requirements for DBS checks should not be approached lightly and checks should only be required where there is clear justification. Therefore, it is proposed that all Members are requested to agree to a basic check, with only specified roles being required to undertake enhanced DBS checks. This option seeks to balance the need to protect individual Councillors' private data and giving some level of assurance to the members of the public.

Timing of checks

2.17 If changes to the Council's current approach to DBS checks for councillors are taken forward and agreed by Full Council, it is proposed that following the elections in May 2025 those elected councillors will be contacted about DBS checks.

GOVERNANCE

2.18 The Committee recommends the County Council to:

✧ approve (1) Approve that an Enhanced Disclosure and Barring service check be undertaken for Members performing the following roles:

- i. nominated substitutes for the Corporate Parenting Panel (as set out in paragraph 2.12) and;
- ii. members of the Discretionary Transport Appeal Panel (as set out in paragraph 2.14).

(2) Approve that all Members are requested to undertake a basic criminal record check after the County Council elections in May 2025;

(3) That the Council's DBS Policy Statement is updated to include reference to the changes proposed in Recommendations 1 and 2 as set out in Appendix 3.

3. Amendment to the Constitution

3.1 As part of an ongoing internal review of East Sussex County Council's Constitution it is necessary to update references to legislation in the Constitution where the legislation has been amended or repealed.

3.2 The proposed changes to the Constitution are set out in red in Appendix 4.

Terms of Reference of the Health and Wellbeing Board

3.3 During 2024 a number of changes have been implemented in the governance arrangements of the East Sussex Health and Care Partnership. These changes were reported to the East Sussex Health and Wellbeing Board (HWB) at the meeting held on 16 July 2024.

3.4 One of the main changes was the merging of the Health and Social Care Executive Delivery Group with the Health and Care Partnership Board to form a single body called the East Sussex Health and Care Partnership Executive Board. Consequently, a minor amendment to paragraph 5 of the HWB terms of reference is needed to reflect this change in governance arrangements.

3.5 The proposed amendment is shown in red on a copy of the HWB terms of reference in Appendix 5.

Code of Practice for Good Governance for Local Authority Statutory Officers

3.6 SOLACE, CIPFA and Lawyers in Local Government have published a Code of Practice for Good Governance for Local Authority Statutory Officers. The Code provides advice and sets expectations for local government's statutory roles.

GOVERNANCE

3.7 The Code sets out that the Head of Paid Service (the Chief Executive) or the authority should make arrangements for the deputisation of their role. The Code states that, in nominating a deputy, the statutory officer should ensure that those individuals will have sufficient skill, expertise and knowledge to perform their roles. The Chief Executive has nominated the Assistant Chief Executive as her Deputy and the Committee is therefore recommended to recommend the Council to amend the Constitution to change references to the 'Assistant Chief Executive' to the 'Deputy Chief Executive'. There is no cost to this.

Conclusion and Reason for Recommendation

3.8 It is considered that the proposed amendments to the Constitution are necessary to ensure that the Council's Constitution reflects the changes to legislation, the Terms of Reference of the Health and Wellbeing Board and the arrangements in place regarding the Deputy Chief Executive.

3.9 The amendment to the Terms of Reference of the Health and Wellbeing Board is considered necessary in order to reflect the changes implemented by the East Sussex Health and Care Partnership, namely the newly formed East Sussex Health and Care Partnership Executive Board.

3.10 The Committee recommends the County Council to:

- ✧ approve (1) to amend the Constitution as set out in the report and appendices 4 and 5.

26 September 2024

KEITH GLAZIER
(Chair)