

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	10 DECEMBER 2018
Heading:	DISCLOSURE AND BARRING SERVICE CHECKS FOR MEMBERS – REVIEW OF THE POLICY		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

The report is to update the Committee in respect of the implementation of the Policy on Disclosure and Barring Service for Members which was introduced in May 2017 and to consider the amended policy.

Recommendation(s)

Committee is asked to :

- 1. Note the update in relation to the implementation of the Policy on Disclosure and Barring Service for Members;**
- 2. Consider if all Members should continue to be DBS checked; and if so,**
- 3. Recommend to Council what level of check Members should undergo; and**
- 4. Recommend to Council the amended Policy as set out in Appendix 1.**

Reasons for Recommendation(s)

In order to protect those who are most vulnerable in society the Council adopted a policy for all Members to undergo Standard Disclosure and Barring Checks in 2017. The policy has been in place for two years and so it is a good time, in advance of the District Council elections in May 2019, to look at how the policy has been implemented and consider making suitable changes to the policy in order for the policy to remain up to date.

Alternative Options Considered

(with reasons why not adopted)

To recommend that DBS checks are no longer required – checking an individual’s background would assist in determining whether appointing a Member to a particular role may be less suitable for them in light of a relevant disclosure. In order to protect those who are most vulnerable in society it is proposed that this option be rejected; the Council may be open to criticism if it does not take reasonable steps to assess and mitigate the risk.

To recommend that a basic check is carried out - a basic check contains details of convictions and conditional cautions considered to be unspent under the terms of the Rehabilitations of Offenders Act 1974. The check does not provide details of any police remands or warnings.

To recommend that a standard check is carried out - discloses both spent and unspent convictions, cautions, reprimands and warnings.

To recommend that an enhanced check is carried out – this option is ruled out as it is not lawful to check the barred lists unless the individual who is being checked is going to undertake a “regulated activity” as amended by the Protection of Freedoms Act 2012. Members are not eligible by virtue only of their position as a councillor.

To recommend that DBS checks are carried out for specific Councillor roles only instead of for all Members – all Councillors have responsibilities for decision making and engage in a variety of function across the Council and in their constituency work and so it is considered more appropriate to check all Members.

Detailed Information

The Protection of Freedoms Act 2012 (“PFA”) introduced changes to the arrangements for carrying out criminal records checks. One of the key changes involved the merger of the Criminal Records Bureau (“CRB”) and the Independent Safeguarding Authority (“ISA”) in December 2012 to form a new body called the Disclosure and Barring Service (“DBS”).

The DBS is a non-departmental public body, sponsored by the Home Office. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).

Changes to the definition of Regulated Activity

The changes introduced under the PFA not only affected the administrative arrangements but also scaled back the number of activities, involving work with children and adults, that are regulated; these are known as “regulated activities”. Individuals on a barred list for children and/or adults cannot undertake a “regulated activity” and it is a criminal offence for the Council to allow an individual to do so without first checking whether they are on a barred list.

A “regulated activity” is one involving close work with vulnerable groups, including children, which a barred person must not do. The legislation redefines and reduces the scope of regulated activities. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre.

Councillors generally do not have unsupervised contact with children or adults as part of their role and therefore will not be involved in “regulated activity”. Therefore, unless activities fall within the redefined scope of “regulated activity”, Councillors are not required to be checked by virtue only of their position as a Councillor.

It should be noted that Section 80 of the Local Government Act 1972 already provides some safeguard by disqualifying individuals from standing for election or holding office if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months’ imprisonment (including a suspended sentence).

DBS Checks for Councillors and Council policy

In light of safeguarding issues in other Councils, the Standards and Personnel Appeals Committee requested that the Council’s position be reviewed and the development of a policy for consideration was placed on the Committee’s work programme in 2016.

Section 11 of the Children Act 2004 places a statutory duty on key people and bodies, including district councils, to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children.

In seeking to identify the appropriate options in relation to the undertaking of DBS checks for Councillors, other local authorities were consulted to provide information on their respective positions and the recommendations and alternative options presented in 2016 took this research into account. The established practice within local authorities with regard to undertaking DBS checks on Councillors varies but it appears that local authorities are increasingly undertaking DBS checks for their Members. County or Metropolitan Council’s having a responsibility for education and social services functions generally carry out such checks.

Although the duties and responsibilities of Councillors do not fall under the scope of “regulated activity” and Councillors are no longer required to be checked if not undertaking such activity, the Council can still request that DBS checks (excluding a check of the barred lists) be carried out.

Safeguarding children, young people and adults is a key priority for the Council and the important role Councillors play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised.

Councillors have a wide range of responsibilities which may require Councillors to access sensitive information about, or have contact with, vulnerable children and adults. A Councillor’s constituency work may bring them in to unsupervised contact with vulnerable people. The fact that all Councillors are checked may strengthen public confidence.

The Standards and Personnel Appeals Committee recommended that all Councillors should be DBS checked at the Standard level. At Council on 8 December 2016 it was:

“RESOLVED that

- a) the proposed Policy on Disclosure and Barring Service ‘DBS’ Checks for Councillors and Co-opted Members, as presented to Council, be approved and adopted;*
- b) it be agreed that all Councillors bear the individual cost of their annual DBS check (undertaken by the Council) and the monies be deducted accordingly from their Member allowance via the Council’s payroll system.” (Council Minute C.45 refers)*

DBS Checks

There are now three levels of DBS checks that can be carried out; when the Council's 2017 policy was introduced only Standard and Enhanced checks were available. The three levels of checks are:

1. **Basic DBS** – A Basic check is for any purpose, including employment. The certificate would disclose details of convictions and conditional cautions that are considered to be unspent under the Rehabilitation of Offenders Act 1974 (ROA). An individual can apply for a basic check directly to DBS, or through the Council if the individual gives consent to carry out the check. The Basic check costs £25.
2. **Standard DBS** - this level of check would disclose both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National computer which are not subject to filtering. An individual cannot apply for a standard check themselves. The Standard DBS check costs £26.
3. **Enhanced DBS** - this level of check provides the information resulting from a standard DBS check and may also contain non-conviction police information provided by the local police force. The enhanced check may be with or without checks against the barred lists. The enhanced DBS check costs £44.

A DBS check has no official expiry date. Any information included will be accurate at the time the check was carried out. The Council's current policy is to require a Member to undergo a DBS check within two months of the Member taking office following an election. The Council decided not to accept previously-issued DBS checks unless this was through the official update service. In order for a check to be portable a Councillor would have to firstly have a new DBS Certificate. The Member would then have 14 days to register with the DBS for the Update Service after the certificate issue date (the Council cannot do this on the Member's behalf). Registration must be renewed annually and costs £13 per year. It is only when you have successfully registered with the update service that your DBS check is portable. The DBS Update Service keeps DBS certificates up to date online and allows a certificate status to be checked at any time. For the Council to be able to use the Online Update Service the elected Member would be required to give consent for access.

The Committee is asked to consider:

1. **Whether to recommend to Council that all Members should continue to undergo a DBS check following their election to the Council; and if so**
2. **What level of DBS check to recommend to Council; and**
3. **Appropriate amendments to the Policy as set out at Appendix 1 to the report.**

Implementation of the Policy – Update

Following the implementation of the policy in May 2017, 34 out of 35 Members have undergone a standards DBS check. Councillor Joanne Donnelly is the only Councillor not to have undergone a DBS check through the Council. Councillor Donnelly has been reminded of the need to undergo a DBS check on numerous occasions.

Implications

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

Legal issues are outlined in the report.

Finance:

In accordance with the Council resolution, the costs of the DBS checks have been paid for by Members by the deduction from their allowance. There are no budgetary implications.

Budget Area	Implication
General Fund – Revenue Budget	None
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation
Failure to meet Section 11 of the Children Act 2004 duty which places a statutory duty on key people and bodies, including district councils, to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children.	The approval of a policy whereby all Councillors undergo a DBS check provides a means of demonstrating the Council is complying with its statutory duty. The proposed policy also sets out the process in the event that information is disclosed as part of the DBS check.
Security of data.	The proposed policy identifies how the Council ensures data is retained securely in line with legislation.

Human Resources:

There are no Human Resource implications associated with the report.

The HR Shared Service is involved in the processing and safe storage of the DBS checks and information disclosed.

Equalities:

If the Council adopts a reviewed policy it will apply to all Members.

The DBS offers a confidential checking service for transgender applicants in accordance with the Gender Recognition Act 2004.

Other Implications:

None.

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Policy on Disclosure and Barring Service (“DBS”) Checks for Councillors and Co-opted Members

Background

1. The effective date of commencement for this policy is [*to be confirmed*].
2. This policy complies with the exception to the Rehabilitation of Offenders Act 1974 and with the Disclosure and Barring Service Code of Practice.
3. This policy replaces all previous policies, decisions and/or precedents relating to criminal records checks for Ashfield District Councillors.

General Principles

4. In light of the fact that the Council has a duty to protect the most vulnerable in society this Policy requires all Councillors to undergo [*basic or standard*] level DBS checks.

The Process

5. *Within two months of taking office following election, all newly elected Councillors will be required to undergo a standard DBS check.*
6. Checks will be processed by Democratic Services in conjunction with Human Resources following a request by the Council’s Monitoring Officer.
7. The relevant Councillor will be provided with a DBS certificate issued by the DBS. The Council will be notified of the disclosure and whether the DBS check is clear. This information will be returned to the Monitoring Officer. Where a check is not clear, for instance, it contains details of an offence, the Councillor will be required to provide a copy of the DBS certificate to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the content of the DBS certificate is disputed and the dispute is raised with the DBS within 3 months of the date of issue, in which case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.
8. In accordance with Section 124 of the Police Act 1997 disclosure information will only be passed to those people who are authorised to receive it in the course of their duties. The Monitoring Officer will maintain a record of the date a check was requested, the date a response was received and a ‘list’ of all those to whom the disclosure or disclosure information has been revealed together with other relevant information. It is a criminal offence to pass this information to anyone who is not entitled to receive it.
9. Disclosure information will only be used for the specific purpose for which it is requested and for which the applicant’s full consent has been given.

10. Records of the Disclosure Number will be kept electronically, along with the date of issue. Where Disclosure Information is made available this will be kept securely in lockable, non-portable containers and destroyed within six months in line with the DBS Code of Practice and the Data Protection Act.
11. Once the retention period has elapsed, any disclosure information will be destroyed by secure means. No photocopy or other image of the disclosure or any copy or representation of the contents of a disclosure will be kept. However, as stated above, the Monitoring Officer will maintain a register of the date of the request for, and issue of, a disclosure, the name of the subject, the type of disclosure requested, the position for which the disclosure was requested, the unique reference number of the disclosure and the detail of any decision taken as a result of the disclosure.

Portability

12. DBS certificates are not portable other than for those individuals registered with the online DBS update service.

The Use of Disclosure Information

13. The existence of a criminal record or other information revealed as a result of a standard DBS check will not debar a Councillor from holding office.
14. In the event that the disclosure information received raises issues of concern, the Chief Executive advised by the Monitoring Officer in consultation with the relevant Group Leader, will discuss with the individual Councillor the restrictions considered necessary, to safeguard children, young people and adults, on the positions held by that Councillor.

Review of the Policy

15. This policy will be reviewed every two years and updated as and when required as a result of changes in the law.