

REPORT TO: **STANDARDS AND
PERSONNEL (APPEALS)
COMMITTEE**

DATE: **10 OCTOBER 2016**

HEADING: **DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS**

PORTFOLIO
HOLDER:

KEY DECISION: **NO** SUBJECT TO CALL-IN: **NO**

1. PURPOSE OF REPORT

To consider the draft Policy on Disclosure and Barring Service (“DBS”) Checks for Elected Members.

2. RECOMMENDATION(S)

Committee is requested to consider whether all Elected Members should be DBS checked and if so recommend the draft Policy on Disclosure and Barring Service (“DBS”) Checks for Elected Members attached to the report for adoption by Council.

3. REASONS FOR RECOMMENDATION(S)

In order to protect those who are most vulnerable in society it is proposed that the Council adopts a policy of DBS checking all Members. The fact that all Councillors are checked may also strengthen public confidence.

4. ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

- a) **To continue to not carry out DBS checks.** 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.
- b) **To carry out standard DBS checks for all Councillors.** Standard checks only reveal basic information concerning any unspent convictions and cautions, police remands and warnings; the enhanced level DBS certificate also contains any additional information held by the local police that they reasonably consider to be relevant to the individual’s role. This information is useful to determine whether there are concerns under investigation locally which have not resulted in any formal action and any information provided may also help put details of any offence in context.
- c) **To carry out enhanced DBS checks with a check of the barred lists.** This option is ruled out because 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. Councillors would not be eligible by virtue only of their position as a Councillor.

- d) **To carry out DBS checks in relation to specific roles which have some relationship with services that engage in “regulated activity”.** All Councillors have responsibility for decision taking at Committees therefore identifying specific individuals to DBS check would not be appropriate. Since Councillors engage in a variety of functions across the Council and in their constituency work it is more appropriate to check all Councillors.

5. DETAILED INFORMATION

Background

- a) The Council considered whether Members should be required to undertake, what was then, a Criminal Records Bureau (CRB) check in 2011. The Corporate Safeguarding Working Group led this review at the time. The Group concluded that a risk assessment of all the various member roles was required to determine on a role by role basis if CRB checks were required. The risk assessments were carried out based upon member role descriptions in place at the time. None of the roles were identified as having significant unsupervised contact with children or vulnerable adults. Councillors appointed to outside bodies may, depending on the type of organisation, come into contact with vulnerable groups, however, if such organisations require CRB checks to be undertaken the responsibility for carrying out those fell to that organisation.

Reforms to CRB and Independent Safeguarding Authority

- b) 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”).
- c) 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

- d) 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.
- e) 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.
- f) 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.

- g) 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).
- h) Following the changes in legislation, the Council continued to not undertake DBS checks for Members on the basis that their role does not automatically fall within the scope of "regulated activity" and the risk assessments highlighted no significant risk arising from any specific Member role.

DBS Checks for Councillors and Council policy

- i) In light of recent safeguarding issues in other Councils, the Standards 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. 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.
- j) In seeking to identify the appropriate options in relation to the undertaking of DBS checks for Councillors, other local authorities have been consulted to provide information on their respective positions and the recommendations and alternative options take into account this research. The established practice within local authorities with regard to undertaking DBS checks on Elected Members varies but it appears that local authorities are increasingly undertaking DBS checks for Members. County or Metropolitan Council's having a responsibility for education and social services functions and generally carry out such checks.
- k) 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.
- l) 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.
- m) 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.
- n) There are two levels of DBS checks that can be carried out. **Standard DBS** checks which disclose previous cautions, convictions, police reprimands and warnings relating to an individual. **Enhanced Checks** (without a check of the barred lists) provide the information resulting from a standard DBS check with the addition of relevant police information provided by the local police force. Chief police officers are asked to provide any information which they "reasonably believe to be...relevant and ought to be included in the [enhanced DBS] certificate", having regard to the purpose for which the certificate is sought.

- o) To address concerns about proportionality, the Government has introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check.
- p) If Committee is minded to recommend to Council that enhanced DBS checks are undertaken for all Councillors a draft policy is attached for consideration. The proposed policy was discussed at the recent Cross Party Update meeting and all those present commented that on balance it was preferable to carry out DBS for all Elected Members. They felt that a Councillor is a figure of authority whom people trust and as such the position could be exploited; they felt that the adoption of such an approach would strengthen public confidence.

Accepting a previously issued DBS check and Update Service

- q) Ultimately it is for the Council to determine whether to accept previously-issued DBS checks. The following should be considered before making a decision:
 - the decision made by a Chief Police Officer to disclose information on a DBS certificate was made based on the position for which the criminal record check was originally applied for; it cannot be assumed that no other intelligence would be disclosed for a different position;
 - the information revealed was based on the identity of the applicant, which was validated by another registered body, at the time that the original check was requested; the Council would have to ensure that the identity details on the certificate match those of the applicant
- r) The online update service has made portability easier. In order for a check to be portable the Member 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. 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.
- s) The DBS Update Service keeps DBS certificates up to date online and allows a certificate status to be checked at any time.
- t) For the Council to be able to use the Online Update Service the Elected Member would be required to give consent for access.

6. 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.

Financial:

The cost of each enhanced DBS check is £44 (so a total of £1,540) for which there is no existing budget.

Health and Well-Being / Environmental Management and Sustainability:

There are no Health and Well-Being / Environmental Management and Sustainability implications contained in this report.

Human Resources:

There are no human resource implications arising from this report.

Diversity/Equality:

There are no equality/diversity issues relating to this report.

Community Safety:

The Council has a duty to protect the most vulnerable in society. The fact that all Councillors are checked may strengthen public confidence.

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 xx.
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 Council has a duty to protect the most vulnerable in society this Policy requires all Councillors to undergo enhanced level DBS checks.

The Process

5. Within two months of the commencement date of this Policy and thereafter for newly elected Councillors within two months of taking office following election, Councillors will be required to undergo an enhanced DBS check.
6. Checks will be processed by the [TBC] 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. While awaiting destruction, disclosure information will remain in a lockable container. 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 those between 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 an enhanced 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.
15. This policy will be reviewed every two years and updated as and when required as a result of changes in the law.