



## **AGENDA ITEM 7**

### **OVERVIEW AND SCRUTINY BOARD**

**12<sup>th</sup> DECEMBER 2006**

#### **CRIMINAL RECORDS BUREAU (CRB) CHECKS: REPORT OF THE CHILDREN AND LEARNING SCRUTINY PANEL**

#### **PURPOSE OF THE REPORT**

1. To update the position following the Children and Learning Scrutiny Panel's decision to include Criminal Records Bureau (CRB) checks as a scrutiny topic in its current work programme.

#### **RECOMMENDATIONS**

- a) That the Overview and Scrutiny Board (OSB) notes the updated position in terms of the Children and Learning Scrutiny Panel's 2006/07 Work Programme.
- b) That the findings of the Children and Learning Scrutiny Panel in respect of the process used for Criminal Records Bureau checks in the Council be endorsed.
- c) That any necessary future changes in procedure following the introduction of new legislation or guidance be overseen and implemented by the CRB Working Group.

#### **BACKGROUND**

2. At its 22<sup>nd</sup> June 2006 meeting, the Children and Learning Scrutiny Panel approved its work programme for the 2006/07 municipal year. Among the agreed topics for detailed investigation was Criminal Records Bureau (CRB) checks - ie how the Council deals with the process by which prospective employees are vetted prior to being permitted to work with potentially vulnerable groups, including children.

3. On 24<sup>th</sup> July 2006 the scrutiny panel was advised that it had been ascertained that the issue of CRB checks within the authority was already under review by an officer working group. The panel consequently agreed that it would consider the issue further once the officer group had reported.
4. An interim report (attached at **Appendix 1**) was prepared by the Members Office Manager, Legal and Democratic Services - who chairs the CRB Working Group - and considered by the Council's Corporate Management Team (CMT) on 14<sup>th</sup> September 2006. All of the report's recommendations were agreed by CMT and work is ongoing to cost the recommendations and develop a detailed implementation programme.
5. The report was submitted to the Children and Learning Scrutiny Panel (16<sup>th</sup> October 2006), when the working group's Chair was present to update the position and answer Members' questions.
6. Having considered the submitted report and questioned the Chair of the CRB Working Group, the Children and Learning Scrutiny Panel made the following findings/reached the following conclusions:
  - That the issue of CRB checks and associated procedures has been examined very thoroughly and effectively by the working group.
  - That the findings and recommendations of the working group appear to cover all aspects of this topic that would have been considered by the Children and Learning Scrutiny Panel had the issue been examined by the panel as a detailed scrutiny review.
  - That implementation of the recommendations of the CRB Working Group will ensure Council compliance with current legislation and guidance.
  - That the CRB Working Group will continue to meet to ensure that any necessary future changes to the CRB checks procedure (eg following the anticipated introduction of the Safeguarding Vulnerable Groups Act) are implemented.
7. The scrutiny panel was also advised by the Chair of the working group that it will be kept updated in terms of any future changes in procedure following the introduction of any new legislation or guidance.
8. Having heard this information/reached the above conclusions, the Children and Learning Scrutiny Panel agreed as follows:
  - (a) That the thorough investigation of this issue by the CRB Working group is welcomed and appreciated.
  - (b) That the recommendations of the working group be endorsed as their implementation will ensure compliance with all relevant legislation and guidance to safeguard potentially vulnerable groups.

- (c) That any necessary future changes in procedure following the introduction of new legislation or guidance should be overseen and implemented by the working group.

## **BACKGROUND PAPERS**

9. The following background papers were used in the preparation of this report:

Minutes of the Children and Learning Scrutiny Panel meeting - 22<sup>nd</sup> June 2006.

Report submitted to the Children and Learning Scrutiny Panel - 24<sup>th</sup> July 2006 "Work Programme 2006/07: Update".

Minutes of the Children and Learning Scrutiny Panel meeting - 16<sup>th</sup> October 2006.

Report submitted to the Children and Learning Scrutiny Panel - 16<sup>th</sup> October 2006 "2006/07 Work Programme: CRB Checks".

**COUNCILLOR LINDA WILSON  
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## REPORT OF THE CRB WORKING GROUP

### REMIT OF THE GROUP

- 1 The CRB Working Group was established at the request of CMT following consideration on 9<sup>th</sup> March 2006 of a report concerning CRB Checks.
- 2 In her Memo dated 2<sup>nd</sup> May 2006, Linda Maughan asked that the CRB Working Group to address the following issues:
  - ⇒ Retrospection
  - ⇒ Repeat Checks
  - ⇒ Panel Approach
  - ⇒ School Support Staff
  - ⇒ Family Members of employees living on school premises
  - ⇒ Training
  - ⇒ Consistency
  - ⇒ Timetable
- 3 The Working Group recommendations relating to family members of employees living on school premises are dealt with under School Support Staff. Consistency is considered after the other subject areas for the sake of clarity.
- 4 All the recommendations contained in this report reflect the current legislation and guidance. However, the Safeguarding Vulnerable Groups Bill is currently before Parliament, and is likely to receive Royal Assent late 2007. If passed in its current form the Bill will have a significant effect on some of the current practices relating to CRB checks, and the recommendations contained in this report. The Bill is still in the early stages of the procedure, and could be subject to significant change during the Commons Committee stage. For this reason, the Working Group has not incorporated the possible requirements of the Bill into its recommendations.

### CONSIDERATION AND RECOMMENDATIONS

- 5 The recommendations of the Working Group are as follows:

## Retrospection

### Remit

- 6 Should the decision of retrospective checks (for staff in CRB check posts who took up post before the CRB system) await any imminent government guidance or can it be taken now? If the latter do the working party support the proposal that, on a phased basis, retrospective checks should be introduced? Can the process for publicising and implementing retrospective claims be designed for CMT approval?

### Recommendations

- 7 That retrospective checks should not be carried out on existing staff. However, checks should be carried out whenever a member of staff:
- ⇒ moves between establishments (including schools)
  - ⇒ is promoted
  - ⇒ moves to a different post within the Authority and the post to which they are moving is subject to CRB checks.

### Reasons

- 8 Whilst CRB checks will never guarantee the safety of vulnerable service users, it was the view of the Working Group that in an ideal situation, every employee, volunteer, or other person working with children or vulnerable adults, either directly or in a position of trust, should have had a CRB check.
- 9 However, there are a number of practical difficulties in adopting such a position.
- 10 First, there is a contractual issue relating to existing staff. There are no provisions within the employees' contracts of employment to undertake retrospective checks. Such staff would therefore have to agree to the CRB checks, and if they did not agree, then the only course of action would be through disciplinary procedures. In the long term contracts may need to be varied and Trade Unions involved. Furthermore, the advice of the national employers association is that existing employees should only be subject to CRB checks if there is some suspicion about that person. The Working Group did feel that it could be seen as unreasonable for long serving employees about whom there have been no concerns to be required to undergo checks.
- 11 Second, the latest advice from the DfES ('Obtaining CRB Disclosures for people seeking work in schools': 26 January 2006) advises that "there will be **no requirement to obtain a Disclosure on existing staff**. Employers will continue to have discretion to seek a Disclosure where they have grounds for concern about the suitability of an existing member of staff, and where the member of staff consents. Otherwise, as now, people should only be checked when they seek a new appointment, or have a break in service of more than 3 months, or if

they have not previously been eligible for a Disclosure and move to work that involves significantly greater responsibility for children than in their present position.” (note: DfES emphasis).

- 12 Third, whilst new legislation dealing with alignment of List 99 with other sources of information (following the Bichard Inquiry recommendations and DfES review), is anticipated, this is unlikely to be in force until 2008. Amendments to current school staffing regulations (School Staffing (England) Regulations 2003, as amended) have been introduced with effect from 12 May 2006 to fill this gap, to ensure that checks are undertaken on all those who are now appointed by a school governing body. The Working Group’s recommendation is that the recommendation at paragraph 7 should be applied to all staff working with children and with vulnerable adults, and not only to staff employed in schools.
- 13 Fourth, there is a resource issue. There are approximately 5,500 staff in Middlesbrough in posts considered to require CRB checks. The Working Group estimates that the cost of implementing retrospective checks would be in the region of £200,000 in fees alone. Additionally, there would inevitably be a requirement for additional administrative resources to complete retrospective checks.

### **Repeat Checks**

#### **Remit**

- 14 If a policy of repeating checks is to be introduced should the re-check period be three years and if not what should it be? Should the introduction of repeat checks be phased in? What are the practical implications of this?

#### **Recommendations**

- 15 That in general terms, and with the exceptions contained in the following paragraphs, repeat checks should not be introduced.
- 16 The exceptions mentioned above are:
  - ⇒ employees in fostering and adoption services should be subject to CRB checks every 3 years
  - ⇒ employees (including all support and domestic staff) in regulated services and establishments – that is homes, establishments and services that are registered with CSCI – should be subject to CRB checks every 3 years
  - ⇒ social workers who work on a one-to-one basis with vulnerable children should be subject to CRB checks every 3 years

- ⇒ repeat checks should be undertaken where a member of the workforce (if effectively appointed by the Governing Body), moves schools within the Authority. This is in line with the School Staffing (England) Regulations 2003, as amended, and the requirements of 'Safeguarding Children – revised arrangements', DfES 19 January 2006.

## **Reasons**

- 17 As with retrospective checks, in an ideal situation checks would be carried out at regular intervals in order to maximise the protection afforded to the most vulnerable service users. However, there is again a major resource issue, estimated to be in the region of £7200 per annum (at current fee levels) plus administrative costs.
- 18 There is a statutory requirement to check employees in fostering and adoption services every three years, and CSCI guidance advises that it is considered good practice for employees in regulated establishments and services to be checked every three years. The recommendation relating to social workers working with vulnerable children is considered to be good practice. The recommendation that repeat checks should be undertaken where a member of the workforce moves schools within the Authority is also a statutory requirement.

## **Panel Approach**

### **Remit**

- 19 Can a system of operation for a panel approach to considering CRB information be designed, nominations made and guidelines on decision making be drafted, for CMT approval. The guidelines to cover how to consider information produced and determine action when the CRB checks elicit information relating to (i) Children/Vulnerable adults and (ii) Unrelated convictions and the options available to respond to such information.

### **Recommendations**

- 20 That a CRB Panel is established to comprise the following:
- ⇒ Lead Counter-signatory (David Jackson)
  - ⇒ Principal Solicitor, Common Law (Jeanette Thompson)
  - ⇒ Head of Personnel (or substitute)
  - ⇒ Operational Manager
- 21 When disclosure information is received by the Authority which, in the opinion of the lead countersignatory, might preclude an applicant from taking up employment with the Council, then the information will be referred to the Panel for consideration. It is envisaged that the operational manager will be whichever manager is responsible for the post that is subject to the CRB disclosure.

## **Reasons**

- 22 There are a number of occasions when the information received as a result of CRB checks needs careful judgement. Clearly, if the checks show up offences against vulnerable people, the decision will be relatively straightforward. In other cases decisions will have to be made based on the number of offences, the nature and seriousness of offences, how long ago any offences were committed, the type of post to which the CRB check relates, and so on. The Working Group felt that these sorts of decisions would be better made by a Panel, rather than by one or two individuals. The mix of service management, Human Resources and legal skills will bring a greater breadth to the decision making process.

## **School Support Staff**

### **Remit**

- 23 What is the working party's recommendation regarding support staff in schools whose posts are not currently CRB check posts?

Is it legal to extend the CRB check process to cover all adult members of the family of any prospective employee who will live in accommodation on school premises?

### **Recommendations**

- 24 That all school support staff, including cleaners, should be checked. This should apply to all new appointees, and those who have come back into the service after a break of three months or more. This will ensure consistency with teaching staff. The Panel is not suggesting that this recommendation is used to conduct annual checks on staff (such as cleaners) whose contracts are terminated during the summer holidays.
- 25 CRB checks should be extended to include all adult "family" members of any prospective employee who will live in accommodation on school premises. For this purpose 'adult' should be interpreted as 18 or more years of age. Tenancy Agreements in respect of these employees will need to be amended accordingly, together with contracts of employment to allow the Council to withdraw offers of employment where offences have been disclosed on the CRB certificate for those family members.
- 26 School Governors should be subject to CRB checks upon appointment or re-appointment. This approach is then consistent with recommendations relating to retrospective and repeat checks.



## Reasons

- 27 The Working Group was of the opinion that all staff who work in schools should be subject to CRB checks in order to safeguard, as far as is possible, the pupils/students.
- 28 It is not currently possible to undertake CRB checks on all adult members of prospective employee family who live in school premises accommodation without their consent. Furthermore, even if they consent, there is no provision within the current terms and conditions, that would allow a school to withdraw an offer of employment, if the “family” member is found to have a conviction. There is also nothing within the current Tenancy Agreements that would allow the Council/ School to obtain possession of the property in that situation (nor if the employee had a conviction giving rise to concern, but in the latter case, this should follow on from any loss of employment). The Working Group felt, however, that CRB checks should be undertaken. It is possible to request CRB checks on anyone age 10 or over (with consent), but the Working Group felt that it was more appropriate, and perhaps less contentious, to ensure that adult members of the family were checked. It is a matter of judgement as to whether the lower age limit for checks is set at 16 or 18 years of age: Children Families & Learning recommend 18.
- 29 The issue relating to CRB checks and School Governors was raised by Members at a recent meeting of the Corporate Affairs Committee on 31<sup>st</sup> May 2006 when considering the LEA appointment of School Governors. It was the view of some Members that CRB checks should be undertaken on all Governors. The Working Group noted that in 2002 the requirement for all School Governors to obtain a CRB check prior to appointment or election was withdrawn. However, the indications now are that following the Bichard inquiry, the requirement that all Governors are subject to a CRB check may be re-introduced. The Working Group therefore feels that Governors should be subject to CRB checks, and that this would be consistent with the current policy and practice relating to volunteers who work with children.

## Training

### **Remit**

- 30 Are managers and Headteachers generally aware of CRB requirements and considerations? Are there training or guidance needs in some areas? How can this be monitored?

## **Recommendations**

- 31 That HBS HR provide training to all Managers/ Management Teams who employ staff who are subject to CRB checks in order to ensure consistent applications of the Council's Policy and Guidelines. There would be cost implications to this recommendation.

## **Reasons**

- 32 HBS HR have already provided training to head teachers and school governors involved in recruitment. This should be extended to all managers who have responsibility for the recruitment and selection of staff subject to CRB checks in order to ensure correct procedures are followed.
- 33 Furthermore, following the Bichard Report recommendations, all Head Teachers and School Governors who are involved in recruitment of staff should undertake training on the importance of safeguarding children (part of which covers the CRB check process). It has also been recommended that following the roll out of this training, no interviews can be conducted in schools without at least one member on the Panel having undergone this training.
- 34 As mentioned above, it is anticipated that the Safeguarding Vulnerable Groups Bill will introduce a number of changes in respect of requirements and procedures relating both to children and vulnerable adults. Training will be an essential part of introducing the new requirements, and the ongoing management of risk.

## **Consistency**

## **Remit**

- 35 Does the working group consider that there should be any exceptions to the proposal to take a Council wide approach? If so, what are these and why are they needed?

## **Recommendations**

- 36 So far as possible, there should be a consistent approach to undertaking CRB checks. Of the three 'levels' available, it is recommended that as at present all CRB checks should continue to be 'Enhanced' checks, as these include soft information as well as hard information.
- 37 The Working Group also recommends that the Council develops a Policy Statement relating to CRB checks, along with robust protocols and procedures in relation to inter-agency communications and information sharing (see also paragraphs 51 and 52).

- 38 Each department needs to identify those posts that are subject to CRB checks, and to ensure that these are carried out. Appropriate CRB records need to be kept, and to be accessible to managers and external inspectors as necessary.

### **Reasons**

- 39 It might be impossible to ensure absolute consistency in approach, when different agencies require different standards as set out in the above recommendations. However, if the Council has a policy and practice guidelines, then the Working Group believes that the consistency would be in the application of these.

### **OTHER ISSUES**

- 40 Although these were not contained in the original remit from CMT, they have all arisen as part of the considerations of the Working Group.

### **Volunteers, Trainees, Agency Staff and Contractors**

#### **Recommendations**

- 41 In relation to volunteers and trainees, the Working Group recommends that CRB checks are carried out in respect of all those who work
- ⇒ with children or with vulnerable adults
  - ⇒ in schools
  - ⇒ in homes, establishments or services registered with CSCI
  - ⇒ in positions of trust where a post with the Council, undertaking similar or analogous duties, would be subject to CRB checks
- 42 There is no direct financial cost to the Council in respect of volunteers as the Criminal Records Board provide such checks without charge. However, there would be administrative implications because the Council would still need to deal with the applications.
- 43 With regard to Agency teachers, following the recent national Ofsted survey, Schools must ensure that agencies have undertaken the CRB checks, and will be required to provide an audit trail and accurate recording in order to demonstrate compliance. For the sake of consistency, this should apply to managers in all Departments of the Council who are responsible for agency staff who work in posts subject to CRB checks.
- 44 The situation relating to contractors is a little less clear. There are some contractors (eg electrical, plumbing) who might visit establishments infrequently, and not have unsupervised access to children or vulnerable adults. Conversely, there may be contractors (such as cleaning staff, grounds maintenance staff, and school bus

drivers) who attend establishments on a regular and/or frequent basis, and who are in effect part of the 'core team' of the establishment. In respect of these latter contractors, the Working Group recommends that CRB checks should be carried out, as they would be if the contractor was directly employed by the Council. Relevant managers will need to identify contractors who fall within this category, and ensure that checks are undertaken. It is recommended that a list of approved contractors is drawn up, and that part of the approval process is that relevant staff will be required to have CRB checks undertaken on them. As with agency teaching staff, all managers must maintain an audit trail and accurate recording in order to demonstrate compliance. In those exceptional circumstances where an approved contractor cannot comply – eg through holiday or sickness of the staff who have been CRB checked – it will be essential that the staff provided must be supervised, and not have unsupervised contact with children or vulnerable service users.

- 45 The Working Group recommendations relating to retrospection and repeat checks should also be applied to volunteers, trainees and agency staff.

### Reasons

- 46 The recommendations are intended to ensure that volunteers, trainees, agency staff and contractors are all dealt with consistently, and in the same way as employees of the Council.

### People Entering the UK

#### Recommendation

- 47 Whenever a foreign national is appointed (or taken on as a volunteer, trainee, etc) to a post / position that would normally require a CRB check, or when a former UK resident is returning after spending some time abroad, the Council should make enquires of the authorities in the countries from where the person has come, to see if they have a record of anything that would make them unsuitable to work with children or vulnerable adults.

### Reasons

- 48 Where staff are recruited from countries outside the UK, CRB checks and List 99 checks will not be appropriate. Whilst the viability, effectiveness and cost of the above recommendation is unclear, this approach complies with current DfES recommendations, and must therefore be seen as the best practice. The new facility on the CRB Website, relating to foreign nationals, should also be used.

## **Members**

### **Recommendation**

- 49 That Members who are Rota Visitors, and Executive Members with responsibility for children and / or vulnerable adults, should be subject to CRB checks upon appointment or re-appointment.

### **Reasons**

- 50 At present, only Members who are Rota Visitors are subject to CRB checks. However, certain Executive Members, currently those with responsibility for Social Services & Health, Children's Services and Education & Skills, either have personal contact with children and/or vulnerable adults, or are in positions of considerable trust and have access to information and / or records relating to these groups of service users. Including relevant Executive Members is good practice, and consistent with the general approach recommended by the Working Group.

## **Managers' Guidance**

### **Recommendation**

- 51 That Guidelines are produced for all managers involved in recruitment and selection, and that a standing 'CRB Guidance Group' comprising
- ⇒ The Lead Counter-signatory;
  - ⇒ Principal Solicitor, Common Law;
  - ⇒ Head of Personnel (or delegated substitute)
- is established to produce and up-date these Guidelines.

### **Reasons**

- 52 The Working Group felt it to be important that guidelines are prepared for managers throughout the Council, to ensure a full understanding of the requirements and a consistency of approach in respect of CRB checks. The Working Group considers that a group comprising the above officers would be ideally placed to update such guidelines as and when legislation changes and new guidance from central Government is received. (see also paragraphs 37 and 39)

## **Timetable**

### **Remit**

- 53 Can the working group suggest an outline timetable or priority order for all the new work to be covered, subject to funding?

## **Recommendations**

- 54 An outline timetable for implementing the above recommendations is contained in the table on the following page.

Chris Davies  
Chair

8<sup>th</sup> September 2006

<b>Recommendation:</b>	<b>Suggested Timescale:</b>	<b>Notes:</b>
<b>Retrospection:</b>	Immediate	Minimal cost/ organisational implications
<b>Repeat Checks</b>	Immediate	As above
<b>Panel Approach</b>	Immediate	As above
<b>School Support Staff</b>	As soon as possible	CLF to draw up timetable for implementation
<b>Training</b>	Already under way – extend as recommended as soon as possible	HBS to provide costs and timetable
<b>Consistency:</b>		
1 Enhanced checks	Existing practice	
2 Policy & protocols	As soon as possible	
3 Identify all posts	As soon as possible	Each Department needs to draw up current list of posts
<b>Volunteers / Trainees/ Agency Staff/ Contractors:</b>		
1 Volunteers, Trainees and Agency Staff	Immediate implementation –	Minimal cost/ organisational implications
2 Contractors	Advice should be issued to relevant managers at the earliest opportunity	
<b>Foreign Nationals</b>	Immediate	Minimal cost/ organisational implications
<b>Members</b>	Immediate	Minimal cost/ organisational implications
<b>Managers' Guidance</b>	Establish 'CRB Guidance Group' immediately	

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