

STANDARDS COMMITTEE

Report title	Disclosure and Barring Service Checks for Councillors
Chief Executive or Director	Strategic Director of Finance, Governance and Support
Date	3 July 2018
Purpose of the report	To consider changes proposed to the Policy on Criminal Record Bureau (CRB) Checks for Elected Members now known as Disclosure and Barring Service checks (DBS).
Summary of the report	<p>The Council's current CRB policy for elected members was introduced in June 2010. Since the Policy was approved by Council there have been some important developments that affect the criminal records checking process which have resulted in the Policy becoming out of date. This report seeks to inform Standards Committee of the reforms and proposal updating the Council's Policy</p> <p>Previously the Council's policy was to undertake an enhanced criminal records check for all Councillors every five years, and many of those checks have now expired. However the changes above mean that, a blanket approach to enhanced checks would be breach of the DBS 'Codes of Practice' and therefore it is now appropriate for this policy to be reconsidered in light of the above changes.</p> <p>It should be noted that any checks carried out, only show a snapshot of the records held at the time the check was undertaken.</p>
If this is a confidential report, which exemption(s) from the Schedule 12a of the Local Government Act 1972 applies?	NO
Decision(s) asked for	<ol style="list-style-type: none"> 1. That Members consider the amendment to the Council's current DBS policy for elected members. 2. That Members agree that enhanced DBS checks are carried out in relation to specific roles, which have a relationship with services that engage in

	“regulated activity” and that a standard/basic DBS check be carried out for all other members.
Impact of decision(s)	The cost of each Standard/Basic check is £26, an Enhanced check is £44. It is proposed this will be met from the Members Allowances Budget.

What is the purpose of this report?

1. To consider changes proposed to the Policy on Criminal Record Bureau (CRB) Checks for Elected Members now known as Disclosure and Barring Service checks (DBS).

Why is this report necessary?

2. Safeguarding children, young people and adults is a key priority at the Council, and the important role Councillors and co-opted members play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised. The fact that all Councillors are checked may also strengthen public confidence.

What decision(s) are being asked for?

3. The decisions that are being asked for are as follows:-
 - (i) That Members consider the amendment to the Council’s current DBS policy for elected members.
 - (ii) That Members agree that enhanced DBS checks are carried out in relation to specific roles, which have a relationship with services that engage in “regulated activity” and that a standard/basic DBS check be carried out for all other members.

Why is this being recommended?

4. The Council’s current CRB policy for elected members was introduced in June 2010. Since the Policy was approved by Council there have been some important developments that affect the criminal records checking process which have resulted in the Policy becoming out of date. This report seeks to inform Standards Committee of the reforms and proposal updating the Council’s Policy.
5. Previously the Council’s policy was to undertake an enhanced criminal records check for all Councillors every five years, and many of those checks have now expired. However the changes above mean that, a blanket approach to enhanced checks would be breach of the DBS ‘Codes of Practice’ and therefore it is now appropriate for this policy to be reconsidered in light of the above changes.
6. It should be noted that any checks carried out, only show a snapshot of the records held at the time the check was undertaken.

Reforms to CRB and Independent Safeguarding Authority

The Protection of Freedoms Act 2012 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 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).

Subsequent to the above CRB checks are now known as DBS checks. DBS checks provide information about a person’s criminal record history at the point at which the check is made.

There are two levels of DBS checks that can be carried out:

- I. Standard/Basic DBS checks which show disclose previous cautions, convictions, police reprimands and warnings relating to an individual.
- II. Enhanced Checks. 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.

National DBS eligibility guidance was also revised in 2014 and as a result the level of DBS check that can be submitted for a Councillor depends on the role that is being carried out and it is important to note that not all Councillors will be able to get a DBS check.

The position of Councillor is not a standalone position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. However, carrying out a role which would have been regulated activity before the amendments made by the Protection of Freedoms Act 2012 is in the Exceptions Order and so entitlement for a councillor to be checked through the DBS at enhanced level can be found in the Police Act regulations work with children and work with adults definitions but only if they carry out specific functions.

If a Councillor carries out educational and/or social service functions relating to children and/or adults who receive a health or social care service, an enhanced DBS check without a check of any barred list can be requested.

Councillors who carry out education or social services functions relating to children

The Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013 definition of work with children sets out which roles are eligible for enhanced DBS checks. This includes a provision at 5C (1) (A) which states:

“considering the applicant’s suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012.”

In relation to Councillors, the specific reference is set out below:

A person is a member of a relevant local government body if –

- i. he/she is a member of a local authority and discharges any education functions, or social services functions, of a local authority;*
- ii. he/she is a member of an executive of a local authority which discharges any such functions;*
- iii. he/she is a member of a committee of an executive of a local authority which discharges such functions*
- iv. he/she is a member of an area committee, or any other committee, of a local authority which discharges such functions.*

This includes a reference to any sub-committee which discharges any such functions.

What level of check can be requested?

If any of the conditions above are met then a Councillor would be eligible for an enhanced DBS check without a check of the children’s barred list.

Councillors who carry out social services functions relating to adults

The Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013 definition of work with adults sets out which roles are eligible for enhanced DBS checks. This includes a provision at 5B (1) (g) which states:

The exercise of a function of a person who is;

- i. a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);*
- ii. a member of an executive of a local authority which discharges any such functions;*
- iii. a member of a committee of an executive of a local authority which discharges any such functions; or*
- iv. a member of an area committee, or any other committee, of a local authority which discharges any such functions;*

In summary the services would be related to residential care, providing direct payments support services and specialist transport.

What level of check can be requested?

If any of the conditions above are met, then a Councillor would be eligible for an enhanced DBS check without a check of the adults' barred list.

Other circumstances

Councillors who do not carry out any of the specific educational and/or social service functions but who attend community events, take surgeries or visit local residents in their own home where they have access to the general public including children do not meet the legislative criteria but a Basic Check from Disclosure Scotland could be requested.

Prior to the Council submitting an application to the Disclosure and Barring Service, they are legally bound to take reasonable steps to ensure that they are entitled to ask the applicant to reveal their conviction history. Pursuing checks for positions that do not fulfil the appropriate exceptions constitutes a breach of employment law and could result in the Council's Registered Body status being revoked.

PROPOSALS

In light of the changes to the law and the redefined scope of "regulated activity", it is proposed that the Council carries out Enhanced Checks for posts involving a greater degree of member involvement in education and social care functions and which have a much greater degree of contact with services that do engage in 'regulated activities' of the Council for example:

- The Mayor, Executive Members for Adult Social Care and Public Health, Children's Services and Education and Skills.
- Scrutiny chairs: Children & Young People's Learning, Children and Young People's Social Care and Services, Adult Social Care & Services and Health.
- Corporate Parenting Board Members / Looked after children/ Adoption and Fostering

For all other members a standard/basic DBS checks should be undertaken

Two tier checks would allow the Council to a proportionate approach and help mitigate any risk and also allow the public some confidence that appropriate checks are carried out.

It is proposed the frequency of the checks to remain at every 5 years (4 year term of office plus 1) each

7. Other potential decisions and why these have not been recommended

In seeking to identify the appropriate options to propose to Councillors in relation to the undertaking of DBS checks for Councillors, research on other local authorities shows that there is a variation on view which are showed in the options below:

- I **To carry out no DBS checks.**
This option would be a change to current Council Policy position and without any checks taking place it would not be possible to check an individual's background and determine whether an appointment 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 did not take reasonable steps to assess and mitigate the risk.

- II **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.

- III **To carry out enhanced DBS checks on all members.** This option is not considered appropriate 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. Councillors would not be eligible by virtue only of their position as a Councillor or co-opted member.

Impact(s) of recommended decision(s)

Legal

- 8. The recommended decision will ensure that the Council complies with current legislation in relation to DBS checks and will provide a suitable level of assurance in relation to Councillors in sensitive roles.

Financial

- 9. The cost of each Standard/Basic check is £26, an Enhanced check is £44. It is proposed this will be met from the Members Allowances Budget.

The Mayor's Vision for Middlesbrough

- 10. Safeguarding children, young people and adults is a key priority at the Council and , supports all elements of the Mayor's Vision and the important role Councillors and co-opted members play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised. The fact that all Councillors are checked may also strengthen public confidence

Policy Framework

- 11. The report does not impact on the overall budget and policy framework.

Wards

12. The report impacts on all wards equally.

Equality and Diversity

13. There are no specific implications of the proposals related to the public sector equality duty. In terms of the Council's responsibilities to reduce crime and disorder, it could be said that the imposition of conditions to eligibility to discharge certain roles as an elected councillor will contribute to the overall aims of reducing crime and disorder.

There are Human Rights responsibilities in so far as the carrying out of a DBS check infringes an individual's right to respect for private life given that enhanced checks could lead to disclosures of personal sensitive information which may otherwise be considered confidential or 'spent' for the purpose of the Rehabilitation of Offenders Act. This could deter members from standing for election or for particular roles even where the individual simply objects to interference with privacy rather than seeking to hide significant evidence of risk. This may be considered to be outweighed however by the public interest in giving assurance to vulnerable people and to society at large that elected members in a position of trust have undergone a level of vetting and scrutiny as to their suitability to discharge specific aspects of public service rather than in relation to their private lives.

Risk

14. The Council does have a duty of care to service users and the public, and must take reasonable steps to identify foreseeable risks. Elected Members are considered as persons of trust and authority within their local community

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 basic DBS checks (excluding a check of the barred lists) be carried out.

Actions to be taken to implement the decision(s)

15. Undertake DBS checks as recommended by Members.

Background papers

None