

Standards Committee – 26 April 2016

DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS

Summary of report:

This report sets out the option available to the Standards Committee in respect of implementing Disclosure and Barring Service Checks for all Elected Members of the Council. The committee through the chair and officers has made extensive enquiries of the DBS Customer Services Department to ensure that the Council will not be adversely affected generally as a result of implementing a scheme to check whether or not Elected Members have criminal convictions. The Standards Committee last considered this issue on the 26th January 2016.

Background papers:

- Previous Report 21st April 2015 at Appendix 1

Recommendation:

- That Council approve a scheme to ensure all Elected Members have a criminal record check appropriate to their role and function with the Council.

1.0 Background

- 1.1 The issue of DBS checks for elected members was brought before the Standards Committee on 26 January 2015. The historic position was that the Council used to carry out CRB checks in relation to elected members on a regular basis however as a result of changes in legislation the Council stopped doing this. This matter came before the standards committee as a result of concerns that arose out of national abuse enquiries in Rochdale, Rotherham, Oxfordshire, and nationally (Saville and public officials). In a number of these inquiries Elected Council Members, MPs, and other public officials have either been implicated as alleged abusers, or people responsible for services related to safeguarding or support of children and vulnerable adults.
- 1.2 The government in 2010 removed requirements upon Members to be accountable for adult social care through the Care Quality Commission. The new criminal background checks DBS (previously known as CRB) were no longer required for officials such as elected Members from 2011. This Council's constitution therefore makes no specific provision for Elected Members to be checked or supported in relation to the Councils overarching safeguarding obligations, services and policies. However Ofsted and DfE expectations, through inspections and regulations in respect of Councils to raise the quality

and assurance of safety for children and young people, have increased substantially in the last 3 years, so this issue needs to be reviewed. Parliament has also placed Safeguarding Adults Boards, statutory boards with statutory duties associated for Council's from April 2015 onwards.

1.3 The January 2015 report to Standard Board contained a number of options for key members to consider as it was felt that it was vital that Elected Members be informed, engaged and supported in their corporate role safeguarding children and vulnerable adults on behalf of their constituents, and the Council. Key Members immediately associated with these matters were identified as:

- Those directly responsible for such services (notably the Portfolio Holders for Children Services, and Social Care);
- Chairs and Members of Scrutiny Panels for Children Services and Health/Social Services;
- Members involved in the Corporate parenting board, working groups such as looked after children, care leavers, fostering and adoption and related areas likely to bring them directly into contact with children or young people.

It was recommended that all key members in the above roles would be invited to participate on a voluntary basis in specific training in safeguarding, and submit checks through the DBS process, in the following 3 months to protect their own positions, and that of the Council. This would allow the benefits and issues arising from such an approach to be evaluated over the following 6 months. Subject to this evaluation a report would have then been submitted to the Standards Committee inviting it to consider making a recommendation to Council that key members receive training and submit to DBS checks as outlined above.

1.4 Councillors had concerns about the issue of DBS checks for Elected Members so when this report was considered the Committee requested that a further report in respect of this matter was brought before the Standards Committee on the 21st April 2015. This contained a comprehensive summary of the legal position involving DBS checks and is contained at Appendix 1 attached to this report. At the conclusion of the meeting it was resolved by recommendation to Council that all Councillors undergo an enhanced Disclosure and Barring Service check; that all Councillors undertake a process of annual voluntary self-declaration; and that the Monitoring Officer administers this process as part of the annual review of declarations of interests.

1.5 Following this meeting On the 21st April 2015 information was received via an article in the Local Government Chronicle 5th May 2015 that the power to blanket check Councillors had been removed under the Protection of Freedoms Act 2012 and that to do so may not be compliant with the guidance given by the DBS service therefore the Monitoring Officer has written to the service on the 25th June 2015 for further guidance in respect of this matter. The DBS customer service team replied on the 10th July 2015 setting out the position in respect of DBS checking for elected members, they also referred

the matter to their policy team for them to consider whether or not the position of Councillors should be included within the Exceptions Order whereby the role would then be subject to DBS checks. The DBS service confirmed that the Protection of Freedom Act 2012 removed certain office holders from the need to have DBS checks, however they have said that anyone within the pre-September 2012 definition of regulated activity will remain eligible for enhanced DBS checks, whether or not they fall within the post 10th September 2012 definition of regulated activity. They would however no longer be eligible for a barred list check, unless they fell within the post-definition of regulated activity. The DBS service also confirmed that even though office holders may not be eligible for a DBS check Elected Members would be eligible to undergo a Basic Disclosure check through Disclosure Scotland which would show any unspent convictions.

1.6 Elected Members may therefore wish to consider the following proposals which would be proportionate to achieve the safeguarding and leadership roles of Councillor across the Council and the community it serves.

- Those Councillors whose roles fall within the definition of being involved in a regulated activity undergo a full DBS check;
- The remaining Councillors undergo a basic disclosure check through Disclosure Scotland;
- These checks above subject to the limitations identified be undertaken in respect of all existing Councillors;
- That the check be undertaken in the first instance on all Elected Members currently holding office with the Council;
- That the checks be undertaken after an Elected Member is re-elected or elected to office; (This will also add a safeguard that those who are elected to office are not barred from holding the office of Councillor due to relevant conviction(s). It will also ensure that Elected Members are formally checked for criminal convictions every four years);
- That on an annual basis each Elected Member sign a declaration stating that there has been no change to their criminal record status subsequent to their initial criminal records check (DBS checks and Basic Disclosure checks have no expiry date);

The actual operation and management of the scheme will be determined by the Monitoring Officer in conjunction with HRD who currently manage DBS applications on behalf of the Council. It is proposed that this matter be taken to a Council meeting in the forthcoming municipal year after the Local Elections in May 2016, and that prior to the Council meeting there is consultation with all the group leaders in respect of this matter.

2.0 Financial Implications

- 2.1 The cost of each Basic Disclosure Check from Disclosure Scotland is £49.00. The cost of each DBS check from the DBS Service is £44.00. The approximate cost to the Council every year four years, removing considerations of by-elections and composition of committees, would be approximately £2940.00. There would also be an incidental cost of officer time in administering such a scheme and assisting in

3.0 Resource and legal considerations:

- 3.1 None directly related to this report over and above the need to administer the DBS and Basic Disclosure checks. The legal requirements to DBS checks are set out in Appendix 1.

4.0 Performance and Risk Management issues:

- 4.1 Performance and risk management is a feature of all Council functions. It is important that Council policies and procedures are reviewed and updated on a regular basis. If the Council fails to do this there is an increased risk that the Council will be subject to legal challenge or litigation. There are also potential safeguarding and governance issues in respect of the options considered.
- 4.2 In terms of performance it is important that both Elected Members have a clear framework of standards to follow in delivering services to the community. These frameworks provide accountability and transparency in respect of the way in which the Council delivers services. This will also strengthen public confidence in the probity of those holding office.

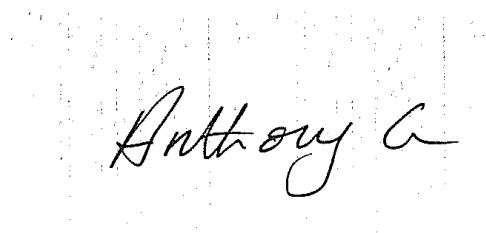
5.0 Equality Implications:

- 5.1 In maintaining up to date policies and procedures the Council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities. It is important that the Council acts in a fair and transparent manner to preserve and maintain public confidence in the governance of the Council.

6.0 Consultation:

- 6.1 Consultation has been carried out with the DBS Service, the Standards Committee, comprising the Council's Independent Members (who are both in favour of a scheme to check the criminal records of Elected Members). Relevant Officers including the Executive Directors of Children's and Adult Services; Head of HRD, Direct Services; Executive Director Resources.

Author:

A handwritten signature in black ink, appearing to read 'Anthony C', enclosed within a faint, dotted rectangular border.

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