

Standards Committee – 21st April 2015

DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS

Summary of report:

This is an updating report in respect of a previous report that was considered by the Standards Committee on the 27th January 2014, to seek agreement to changes how Disclosure and Barring Service (DBS) checks should be applied to the council's elected members as a result of changes made to the law by the Protection of Freedoms Act 2012. The report also sets out the practicalities of administering the scheme in terms of resources and performance which was not set out in the previous report to Standards Committee.

Background papers:

Previous Report 26th January 2015 at Appendix 1

Research in respect of DBS position at other authorities Appendix 2

Recommendation:

1. That the report be noted and a decision be taken upon the appropriate option for applying for DBS checks in respect of elected members as set out at Paras 1.15 A-D.
2. That there is a recommendation made to council in respect of the option selected.

1.0 Background

1.1 In March 2006 the Cabinet received a report entitled Corporate Parenting – Criminal Records Bureau (CRB). This report followed a review by the children and Lifelong Learning Scrutiny and Performance Panel of the role of elected members visiting children's residential units in Walsall. Cabinet recommended that all elected members undergo enhanced CRB checks to ensure that children were properly protected as members develop corporate parenting activity in the borough. The Cabinet subsequently agreed that all elected members undergo enhanced CRB checks.

1.2 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).

1.3 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. That it is why it is important for the Council to carry out pre-appointment checks in relation to individuals appointed to positions that involve the carrying out of a "regulated activity".

1.4 The revised definition of "regulated activity" was brought into force as a result of the PFA in September 2012. A "regulated activity" is one involving close work with vulnerable groups, including children, which a barred person must not do. The legislation redefined and reduced 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.

1.5 The majority of Councillors or co-opted members 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 or co-opted members are not required to be checked by virtue only of their position as a Councillor or co-opted member.

1.6 It should be noted that the law relating to elections already provides some safeguard by barring individuals from standing for election if they have been convicted of a criminal offence within the last 5 years and received a sentence in excess of 3 months' imprisonment.

1.7 On the 1st July 2013 a report was presented to the Standards Committee advising elected members of the changes brought about by virtue of the Protection of Freedoms Act 2012. The report advised that it was not considered necessary for all elected members to undergo DBS checks mainly due to the changes in what was defined as regulated activity. It was proposed that all councillors be informed that only in specified cases would they be required to undergo a DBS check and where that was felt to be necessary they would be contacted by the appropriate officer of the council who was administering the scheme. The Committee had concerns about these changes and requested that the Head of HR write to the DBS to express

concerns about the changes and requested a further report to the next meeting of the standards committee.

1.8 A further report for noting was submitted to the Standards Committee on the 7th October 2013 in respect of the PFA 2012. The Committee resolved that the report be noted; that the HR Manager for HR Direct Services keep the Committee informed of any future developments with the DBS; and that the report was referred to Council for noting. The report went to council on the 18th November 2013.

1.9 On the 26th January 2015 a further report was taken to Standards Committee outlining options for Members participation in safeguarding children and adults. That report is included in the background papers to this report. The report was brought for members to consider following national abuse inquiries such as Rochdale, Rotherham and Oxford. The report recommended that “key members” in “key positions” undertook voluntary training, and should be subject to DBS checks. The Committee determined that all elected members should be subject to DBS checks.

1.10 The Standards Committee were advised that in general the role of the elected member is not eligible for a DBS check. There is a cost and resource implication in respect of HR Direct Services administering the scheme, and funding DBS checks. An enhanced DBS check costs £44.00.

1.11 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. Councillors have a wide range of responsibilities and take decisions in relation to core services relating to children and adults, for example, the corporate parenting role. These responsibilities may require Councillors to access sensitive information about, or have contact with, children and adults. 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.

1.12 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.

1.13. To address concerns about proportionality, the Government has recently introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check.

1.14. DBS checks carried out by the Council are only relevant for Councillors acting in their capacity as Councillors. If Councillors carry out roles outside of this capacity

involving work with children or adults (for example, volunteering with the scout movement or in a children's centre), it is their responsibility to check with the relevant organisation regarding that organisation's own DBS checking requirements.

Other Options Considered

1.15 In seeking to identify the appropriate options to propose to Councillors in relation to the undertaking of DBS checks for Councillors, other local authorities have been consulted to provide information on their respective positions. This is included at Appendix 1 herewith. Some of our neighbouring authorities carry out DBS checks on all elected members; some carry out checks in relation to elected members they consider to be their "key members", one carries out no DBS checks.

The options for the council are as set out below:

A. To carry out no DBS checks.

This option is the current Council position. 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. The Council may be open to criticism if it did not take reasonable steps to assess and mitigate the risk. Elected Members who sit on the Adoption and Fostering panels are required to have a DBS check.

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.

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.

D. To carry out enhanced DBS checks in relation to specific roles which have some relationship with services that engage in "regulated activity".

Elected members will need to consider that as Committees are responsible for a decision taking whether or not identifying specific individuals as requiring a DBS check would be appropriate. Since Councillors engage in a variety of functions across the Council it is more appropriate to check all Councillors. These specific roles are

- Leader of the Council
- Deputy Leader
- Portfolio Holder for Children's Services and Education
- Portfolio Holder for Social Care
- Members of the Social Care and Health Scrutiny Performance Panel
- Members of the Children's Services Scrutiny and Performance Panel

It may also require consideration of elected members who are appointed to, Social Services Complaints Panels. There could also be an issue where elected members substitute for other elected members on relevant committees as above.

E. Carrying out enhanced DBS check in respect of all members.

This may be seen as excessive as elected members are not carrying out a regulated activity and some elected members may not have "key roles" as have been identified as being involved with services that engage in a regulated activity. It would however emphasise how seriously the council takes its safeguarding role in respect of Adults and Children, and it may be decided as being proportionate and that all elected members are DBS checked, given the "key roles" identified above requiring a significant number of elected members to be checked in any event.

IMPLEMENTATION ISSUES

1.16 DBS checks would be sought by the Human Resources Direct Services team through use of the DBS e-bulk system which electronically submits the application. This would be subject to an officer from the Democratic Services acting as the nominated verifying officer to check the required documents submitted by the relevant elected member. This role was previously undertaken by an officer from Democratic Services. The DBS scheme would notify HR Direct Services if there was a trace on the check, although the DBS certificate would be sent to the elected member directly and would not be sent to the council. HR Direct Services would notify the Monitoring Officer who would then arrange to meet with the elected member in person to review the disclosure and see if it had any potential relevance to the existing or proposed role of the elected member. If information was disclosed on the DBS check that was of concern or relevant to an existing or proposed role of the elected member, either in terms of their existing or proposed role on cabinet or on a committee, the Monitoring Officer would discuss this with the elected member concerned and their group leader, where applicable, to determine whether or not the elected member should remain or take up a position on a committee or in cabinet. Nominations for appointment to cabinet or committees are normally put forward by the relevant group leader for determination by cabinet. Whilst council appoints to committees there is nothing to stop a political group changing its representation on a committee. The Leader of the council determines membership of the cabinet. This could only be achieved through cooperation. This could therefore mean that although the law itself does not class the role of elected member as being a regulated activity requiring a DBS check, the council would in essence be treating all elected members roles as being a "regulated activity" where a previous conviction or caution which would disbar them from fulfilling certain roles or functions within the

democratic process of the council. This is self-regulation over and above the requirements of the law. No DBS check whether it shows a positive trace or is clear can be kept for over 6 months.

2.0 Financial Implications

2.1 The cost of each enhanced DBS check is £44 therefore the direct cost of administering the scheme where all elected member subject to DBS checking on a four yearly cycle (which reflects an elected members term of office) would be £2640.00 pounds every four years.

3.0 Resource and legal considerations:

3.1 None directly related to this report over and above the need to administer the DBS checks. This also has to be seen in the context that as a result of budgetary decisions, as agreed by cabinet, has reduced resourcing to the team managing the DBS process, so increasing the requirement for more checks to be done will add to the work of this team. Especially where such DBS checks are not required by law.

4.0 Performance and Risk Management issues:

4.1 Performance and risk management are 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 considerations 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.

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 complaints are dealt with in a fair and transparent manner.

6.0 Consultation:

6.1 Consultation has been carried out with the Standards Committee, comprising the council's Independent Members. Relevant Officers including the Executive Directors of Children's and Adult Services; Head of Human Resources, Direct Services; Executive Director Resources.

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Standards Committee – 26 January 2015

Options for Members' participation in safeguarding children and adults

Summary of report:

The safeguarding of children and vulnerable adults has taken a significant development in the aftermath of the issues raised in recent council and national abuse inquiries. These inquiries raise some questions and concerns about Council Members and other public officials in a position of trust and responsibility for children and vulnerable adults, which this paper seeks to address with options for consideration.

Background papers:

Recommendation:

1. The Standards Committee endorses the voluntary arrangement for Members in key positions (as outlined) to receive additional training and submit DBS checks between February and December 2015.
2. A review of the experience and results of the voluntary scheme in recommendation (1) be reported to Standards Committee in January 2016 with the view to making recommendations to Council on a way forward with Member DBS checks.

1.0 Background

1.1. Recent abuse inquiries:

There have been a series of high profile enquiries and court cases on abuse of children and vulnerable young adults arising in Rochdale, Rotherham, Oxfordshire, and nationally (Saville and public officials). In a number of these 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. This report seeks to explore the issues and options for addressing risks to Members and the council arising from these cases.

1.2. Current position:

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 provision for Members to be

protected, checked or supported in regard to the risks associated with safeguarding services and policies.

However Ofsted and DfE expectations, through inspections and regulations on councils to raise the quality and assurance of safety for children and young people, have increased substantially in the last 3 years. Also Parliament has placed the Safeguarding Adults Boards on a statutory basis with statutory duties associated for council's from April 2015.

1.3. Options for key Members:

It is vital that elected members are informed, engaged and support safeguarding children and vulnerable adults on behalf of their constituents, and the council. Key Members immediately associated with these matters include:

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.

Option 1: It is recommended that all key members in the above roles are invited to participate on a voluntary basis in specific training in safeguarding, and submit checks through the DBS process, in the next 3 months to both protect their own positions, and that of the council. This would allow for evaluation on the benefits and issues arising from such an approach over the following 6 months.

Option 2: Subject to the evaluation of option 1, in a report to the Standards Committee in January 2016, Members consider making a recommendation to Council that key members receive training and submit DBS checks as outlined.

2.0 Resource and legal considerations:

- 2.1. **Resources:** The costs of training Members and DBS checks could be absorbed within the Children's services and Social and Inclusion safeguarding budgets for 2015/16, and delivered by specialist officers in those 2 directorates. Subsequent costs would need to be planned against whether option 2 is adopted and how option 1 had operated.
- 2.2. **Legal:** The statutory guidance on DBS changed the requirements, which in brief are: a simple check can be made that is applicable across organisations/roles; Members are not obliged to have such checks and there is no longer any requirement in the constitution. This report therefore seeks to cover risks with Members' agreement.

3.0 Financial Implications

Overall the 2015/16 costs are neutral for the proposals as outlined.

4.0 Performance and Risk Management issues:

The proposals would mitigate risk for Members and the council as outlined in the report.

5.0 Equality Implications:

The children and adults receiving social care and safeguarding support from the Council are entitled to the maximum safety in relation to all those from the Council that might come into contact with them or access information about them. This safety should be no less than that expected of other public officials or employees.

6.0 Consultation:

Legal, Cabinet Portfolio Holders members for children and adults social care were consulted in the preparation of this report.

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Appendix 2

DBS checks for elected members

In mid March 2015, an officer from Democratic Services contacted a number of other local authorities and asked:

- If they could confirm if their authority DMS checks their members
- If they do, are all of their members checked?
- If not all members are checked, then who is?
- If they have a policy or procedure regarding this that they could share with us.

Their responses are set out below:

Authority 1 responded:

"At the moment all members are DBS checked every three years."

We would like them to agree to every four years in line with their term of office, as in theory DBS checks once printed are out of date. We think the majority of organisations go with every three years."

Authority 2 responded:

"Human Resources deal with this at Authority 2. **Enhanced DBS checks are done for all our new members** and then the council has a look at what Committees the other members are on if they request a DBS so that they have a check when attending (ie: site visits)."

Authority 3 responded:

"Authority 3 does not DBS all its Councillors."

Authority 3 is looking at setting up a new system for the submission of DBS applications and in doing so, took specific advice from the DBS who said that elected members did not specifically need/require a DBS.

DBS did acknowledge however that a number of authorities do run checks on all or some of their members, but referred Authority 3 to the criteria for persons who require a check as in their opinion, elected members were unlikely to meet the criteria and that in the very rare circumstances that they may be placed in a position where it is argued that a DBS might be required, their advice was to simply make sure that appropriate mitigating actions were taken (ie: never leave an elected member unsupervised in the presence of a child or vulnerable person when the authority is able to control the situation by having a third person present).

The DBS gave us an example of what they meant by this is, if a Councillor is on official business they should not be doing so unaccompanied, however, if a member is at a surgery

and a parent brings a child for example, it is the parents responsibility to ensure the child is not left alone with the member.

Also they advised that in relation to access to documents, if you even need to give it any thought as to whether a member needs a DBS under this criteria, then there is certainly a reason to doubt that the member should be having access to that information in the first place.

Authority 3 did say however that they have a DBS for the relevant Cabinet Members in view of the potential for the member to have access to some materials."

Authority 4 responded:

"Up to now we have checked all our new members immediately after election, regardless of what Committee/boards they are appointed to. Going forward our Chief Executive has advised that we should only carry out checks on members carrying out regulated activities, such as those having unsupervised contact with children when visiting a school or children's home, etc."

Authority 5 responded:

That they do not check members.

Authority 6 responded:

"We moved to checking all Councillors last year and included this in the Constitution under the Code of Conduct as follows:

6: Disclosure and Barring Service (DBS) Checks

- 6.1 The Council takes its safeguarding responsibilities seriously. To this end, on 15 October 2013, Cabinet (Resources) Panel decided that criminal records checks would be carried out for all Councillors following election. Enhanced Checks will be carried out for those Councillors who may, by virtue of their particular responsibilities have unsupervised contact with Children (as of June 2014, this applied to the Cabinet Member for Children and Families, the Cabinet Member for Schools, Skills and Learning and members of the Corporate Planning Panel. This list will be amended, as necessary, by the Head of the Paid Service and the Monitoring Officer). Standard Checks will be carried out for all other Councillors.**
- 6.2 Checks will be carried out every four years (normally to coincide with election or re-election). In the case of a by-election, a check will be carried out at the time of election and then again if the Councillor is re-elected, unless that date is within 12 months of the original check. Additional checks may be carried out for any Councillor at the discretion of the Head of the Paid Service and the Monitoring Officer.**

- 6.3 *The Council recognises that information released in DBS certificates can be extremely sensitive and personal. Receipt, handling and consideration of certificates will therefore be carried out in accordance with the Disclosure and Barring Service's Code of Practice."*