

Standards Committee – 21 July 2015

DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS

Summary of report:

This is an updating report in respect previous reports that were considered by the Standards Committee to inform elected members of the response from the Disclosure and Barring Service (DBS) as to how checks should be applied in respect of the council's elected members as a result of changes made to the law by the Protection of Freedoms Act 2012. This followed a request from council for the Monitoring Officer to contact the DBS service for their opinion in this matter.

Background papers:

Letter from Monitoring Officer to DBS Customer Services - Appendix 1

Response from DBS customer services team - Appendix 1

Recommendation:

1. That the correspondence be noted.

1.0 Background

1.1 In March 2006 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. 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 On the 21st April 2015 a further report went to Standards Committee and the committee recommended that all elected members be subjected to enhanced DBS checks. Subsequent to this information was received through 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 however they have said that they are referring the Monitoring Officers letter to their policy team for them to consider the position of councillors in respect of whether or not the role of Elected Member should be included within the Exceptions Order whereby the role would then be subject to DBS checks.

1.11 The DBS service have confirmed that the Protection of Freedom Act 2012 has 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.

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 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 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.

Author:

Tony Cox
Head of Legal and Democratic Services
☎ 01922 654822
✉ coxt@walsall.gov.uk