

## **Standards Committee – 25<sup>th</sup> January 2016**

### **DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS**

#### **Summary of report:**

This is an updating report in respect of previous reports that have been considered by the Standards Committee. The last substantive report coming before Standards Committee on the 21<sup>st</sup> July 2015,

#### **Background papers:**

- Previous Report 21<sup>st</sup> July 2015 at Appendix 1
- Letter 13<sup>th</sup> August 2015 Madam Mayor to the DBS at Appendix 2
- Reply from DBS to Mayor 18<sup>th</sup> October 2015 Appendix 3
- Letter from DBS Customer Services to Monitoring Officer 6<sup>th</sup> August 2015

#### **Recommendation:**

1. That the report be noted and the Head of Legal and Democratic Services refer the option put forward by the DBS to the relevant officers in HRD for consideration.

#### **1.0 Background**

- 1.1 The Committee is fully aware of the background to this issue as a series of reports have been before the committee in the last two years. Elected Members overriding concern is that they are properly vetted to carry out the various roles they have to fulfil on behalf of the authority. There has been a series of correspondence with the DBS service which is set out as Appendices to this report.
- 1.2 The email of the 6<sup>th</sup> August 2015 at page 2 suggests that the council could proceed down the route of obtaining basic disclosure from Disclosure Scotland to support the legal requirements elected members are required to have to stand for office. A basic disclosure provides information on unspent criminal convictions and warnings. There is no eligibility criterion for a basic disclosure so all councillors not eligible for a DBS check will be able to obtain this certificate.

## **2.0 Financial Implications**

2.1 The cost of each Basic Disclosure Check from Disclosure Scotland is £49.

## **3.0 Resource and legal considerations:**

3.1 None directly related to this report over and above the need to administer the DBS checks.

## **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.

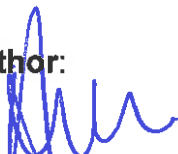
## **5.0 Equality Implications:**

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 Childrens and Adult Services; Head of HRD, Direct Services; Executive Director Resources.

**Author:**



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Agenda No:6

**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 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 18<sup>th</sup> 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 21<sup>st</sup> 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 5<sup>th</sup> 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 25<sup>th</sup> June 2015 for further guidance in respect of this matter. The DBS customer service team replied on the 10<sup>th</sup> 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.

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# Walsall Council

The Mayor's Parlour

Mr Bill Griffiths  
Chairs of the Disclosure and Barring Service Board  
PO Box 165  
Liverpool  
L69 3JD

13 August 2015

Dear Mr Griffiths

## **DBS CHECKS FOR COUNCILLORS**

The Standards Committee at Walsall Council has been reviewing the opportunity for elected Members to undergo enhanced DBS checks for a number of years. This oversight has taken renewed focus since January 2015 where Standards Committee Members have developed the opinion that, in order to be seen as upholding the highest standards of public conduct, all Members should undergo enhanced DBS checks. This opinion has been developed against the backdrop of public scandals where individuals in positions of trust have abused their status as well as ongoing national abuse inquiries at Rochdale, Rotherham and Oxford.

The Committee were advised that since the Freedom of Protection Act 2012 the office of 'councillor' is no longer classed as a 'regulated activity'. However, the committee was still firmly of the view that the role of councillor should be eligible for a DBS check. Members come into unsupervised contact with vulnerable adults and children in their day-to-day business in addition to holding positions or offices that make important decisions that affect the same vulnerable groups.

During consideration of the above issues a report in the Local Government Chronicle (5 May 2015) about the DBS's rejection of a policy at Cornwall Council for all Members to undergo DBS checks caught the attention of Members at our authority. This led to our Monitoring Officer, Anthony Cox, contacting your customer services department on 25 June 2015 to seek clarification on this issue. Darren Nall wrote back on 10 July 2015 and offered the following advice:

*'To clarify, on 10 September 2012 the Protection of Freedom Act 2012 provided a new definition of regulated activity. Part of the amendment was that all 'positions' within Office Holders (England) and some for Wales have been removed e.g. member of a relevant governing body etc. However, everybody with the pre-*

*September 2012 definition of regulated activity will remain eligible for enhanced DBS checks, whether or not they fall within the post-10 September 2012 definition of regulated activity. They would no longer be eligible for barred list checks, unless they fall within the post definition of regulated activity'*

Darren also goes on to explain that he has passed the query onto the policy team for advice on whether there are any plans to amend the DBS 'Exceptions Order' to include the role of councillor.

With the above two paragraphs in mind I would be grateful if you could recommend to your board that the role of councillor should be included on the DBS Exceptions Order in order to provide clarity to the situation. Currently the situation is ambiguous and the advice received that the role of councillor is still eligible for a DBS check under the old regulations despite not being contained in the Freedom of Protection Act is a case in point. I've attached a copy of the email that Anthony Cox sent to the DBS customer services team as it makes a number of excellent points about the role of a councillor and compares it to other similar public positions, such as the role of Magistrate, which are eligible for DBS checks.

The Walsall Standards Committee is very firmly of the opinion that all Members should be eligible for an enhanced DBS check. The Committee believes the checks and balances provided by a DBS check will assist in promoting high standards in public life and deter those of poor character seeking the office of councillor.

Finally, I would like to thank you for your time in reading this letter. I would be very grateful if you could investigate the issues raised and write back to me with a conclusive point of view we can act upon as well the potential for the 'Exceptions Order' to be amended to include the role of councillor.

Yours sincerely



**Councillor Angela Underhill**  
**Mayor of Walsall**  
**Chair, Standards Committee**

CC: Adrienne Kelbie – Disclosure and Barring Service Chief Executive





**Disclosure &  
Barring Service**

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Councillor Angela Underhill  
Mayor of Walsall  
The Mayor's Parlour  
Walsall Metropolitan Borough Council  
The Council House  
Walsall  
WS1 1TP

8 October 2015

Dear Councillor Underhill,

Thank you for your letter of 13 August, addressed to the DBS Chair, Bill Griffiths, regarding eligibility of DBS checks for councillors, and sincere apologies for the delay in responding, this delay was due to an administrative oversight in Bill's office. Bill has asked me to reply on his behalf as Governance Manager.

I understand that the DBS customer services team wrote to your colleague, Mr Cox, with an explanation of why local councillors are not currently eligible for enhanced DBS checks and you have now written asking that the DBS Board consider that the role of councillor be included in the Exceptions Order.

It may be helpful if I explain that the DBS does not own the policy or the legislation under which it operates - this is owned by the Government - and as such it is not within our gift to make changes to it. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the Exceptions Order) which contains the roles, positions and activities which are exempted from the Rehabilitation of Offenders Act 1974 is owned by the Ministry of Justice. The Police Act 1997 and its relevant regulations which allow for enhanced checks to be made are owned by the Home Office.

In order to make an amendment to the Exceptions Order a business case must be presented to the Ministry of Justice for their consideration. I would suggest that this would need to be made from a national perspective perhaps either the Local Government Association or the Department for Communities and Local Government.

The DBS is currently unaware of any planned changes to include councillors in the Exceptions Order. In order for a role, position or activity to be eligible for enhanced level checks, it must first be listed in the Exceptions Order and also be listed in Police Act Regulations. It may therefore be advisable to include the Home Office in any request for changes to legislation.

I hope that you find this useful.

Yours sincerely

A handwritten signature in black ink that reads "Selina Brumant". The signature is written in a cursive style with a large initial 'S' and a trailing flourish.

Selina Brumant  
Governance Manager

**Anthony Cox**

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**From:** Customer Services [CustomerServices@dbs.gsi.gov.uk]  
**Sent:** 06 August 2015 16:21  
**To:** Anthony Cox  
**Subject:** FW: E061503992-174791 DBS Checks in relation to Councillors

Mr Cox – further to my email advice of 10 July 2015 I have now received input from our policy team and their comments are copied below for your attention.

Many thanks for your correspondence dated 25 June 2015 in which you set out why Disclosure and Barring Service (DBS) checks should be available for those appointed as local councillors.

I should begin by advising that the DBS process applications and provide certificates to individuals for presentation to their employer or suitability decision maker. The information on the certificate enables an informed decision to be made regarding the applicant's suitability to be employed or appointed. We also provide guidance on the legislative framework in place to enable applications to be submitted. The DBS does not mandate any requirement for certificates to be held by individuals in any recruitment sector, nor do we have any powers to amend the legislation which enables applications to be submitted to us.

The ability for an employer or suitability decision maker to ask that an individual applies for a DBS check is enabled by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This piece of legislation allows spent and unspent conviction, caution, reprimand and warning information to be released in relation to the specific professions, offices, employments, work and licences included in the Exceptions Order for the purposes of making a suitability decision. The Exceptions Order is owned and maintained by the Ministry of Justice (MoJ). If an individual is applying to work in, or be appointed to, a position covered by the Exceptions Order, then the employer or suitability decision maker can ask them to apply for a standard level DBS check.

Enhanced level DBS checks, including details of any relevant local intelligence information held by the police in addition to spent and unspent conviction, caution, reprimand and warning information, are only available if the position is also covered by the Police Act 1997 (Criminal Records) regulations. These various regulations do not provide a list of job roles that are eligible for this level of DBS check – such a list does not exist. Instead each regulation can be used to identify whether a position is carrying out specific duties or activities which would enable this level of check to be requested by the employer or suitability decision maker. These regulations are owned and maintained by the Home Office (HO).

In addition to the MoJ and HO owned legislation, mandatory requirements for DBS checks are included in sector-specific legislation owned by the Department for Education (DfE) and the Department of Health (DH). These departments, in conjunction with the various sector regulators, specify a requirement for individuals working in positions such as teacher, childminder, doctor, care worker to undergo enhanced level DBS checks, plus a children's and/or adults' barred list check, because of the duties that they carry out.

As advised above, the DBS has no powers to amend the legislation which enables access to or mandates a requirement for DBS checks.

In response to your detailed statements regarding the position of local councillors within the community and the responsibilities that they undertake, DBS is unable to take any action in relation to your request for eligibility to be extended to cover the role of councillor. This is outside our remit. Any request to include the position of councillor in the Exceptions Order would need to be submitted directly to MoJ.

However, the requirements outlined in your letter – providing corroboration of self-declarations and confirming that office holders are of ‘good standing’ – will be met by obtaining a **basic disclosure from Disclosure Scotland**. A basic disclosure provides information on unspent criminal convictions and warnings. There is no eligibility criterion for a basic disclosure so all councillors not eligible for a DBS check will be able to obtain this certificate.

I am concerned with regards to your comments about Nottinghamshire County Council being given “approval” from DBS to implement a blanket-checking policy on all councillors. I am not aware of any such approval being granted and therefore will escalate this for further investigation.

In relation to your query regarding eligibility reference number 44, I can advise that EU Directive 2004/17 relates to coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. From the information you’ve provided, this would not be applicable to the role of councillor. EU Directive 2004/18 relates to the coordinating of procedures for the award of public works contracts, public supply contracts and public service contracts. It is not the case that organisations can carry out DBS checks on any person involved in awarding contracts. The EU Directives allow for standard level DBS checks only to be carried out on those individuals of an “economic operator”, i.e. an organisation tendering for a contract, and those individuals are restricted to the organisation’s directors, senior managers or any other person who has powers of representation, decision or control. The legislation was not designed to be filtered down to staff who do not have those levels of representation when bidding for contracts, nor is it to be passed on to members of staff from other companies that are carrying out work that has been outsourced.

I hope that this reply has clarified the restrictions around how we can help you move forward with this matter and provided you with some useful information.

Yours Sincerely

**Darren Nall**  
Customer Relations  
**The Disclosure and Barring Service**  
PO Box 110, Liverpool, L69 3EF  
**Call Centre: 03000 200 190**  
**[www.gov.uk/dbs](http://www.gov.uk/dbs)**

*For more information about DBS please visit our website or contact our Call Centre which is open 6 days a week, 8am to 6pm weekdays and 10am to 5pm on Saturday. If you would like to speak in Welsh, please phone our dedicated Welsh language line on 03000 200 191 which is open Monday to Friday 9am to 5pm. If you would like to use Minicom, please contact 03000 200 192. Did you know you can track your application(s) online at **[www.gov.uk/disclosure-barring-service-check/tracking-application-getting-certificate](http://www.gov.uk/disclosure-barring-service-check/tracking-application-getting-certificate)***

*Am fwy o wybodaeth am y Gwasanaeth Datgelu a Gwahardd (DBS) ymwelwch â'n gwefan neu cysylltwch â'n canolfan alwadau sy'n agored 6 diwrnod yr wythnos 8 y.b. hyd at 6 y.h. ar ddiwrnodau gwaith a 10 y.b. hyd at 5 y.h. ar Ddydd Sadwrn. Os hoffech siarad yn Gymraeg ffoniwch ein llinell Cymraeg neilltuol ar 03000 200 191 sy'n agored Dydd Llun i Ddydd Gwener 9 y.b. hyd at 5 y.p. A ydych yn gwybod y gellir olrhain eich cais ar lein ar **[www.gov.uk/disclosure-barring-service-check/tracking-application-getting-certificate](http://www.gov.uk/disclosure-barring-service-check/tracking-application-getting-certificate)***

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**From:** Customer Services  
**Sent:** 10 July 2015 15:07  
**To:** 'Anthony Cox'  
**Subject:** RE: E061503992-174791 DBS Checks in relation to Councillors