

Governance Committee: Disclosure and Barring Service checks for Members (Criminal Records Checks)

Background

- 1** The Disclosure and Barring Service (DBS) provides a procedure through which organisations may carry out criminal record checks relating to individuals who may, on behalf of the organisation, hold positions or responsibilities which may bring them into contact with vulnerable persons.
- 2** A decision was taken in 2012 to cease DBS checks for elected members after the introduction of the Protection of Freedoms Act 2012 which limited the circumstances in which DBS checks could be lawfully undertaken. The DBS system was amended late in 2015 to allow all levels of checks to be undertaken where appropriate.

The DBS system – the three levels of checks

- 3** To be eligible for a Standard Check – one that checks records of convictions, police cautions and reprimands – the role must be listed in the (Exceptions) Order of 1975. This creates exceptions to the provisions of the Rehabilitation of Offenders Act in relation to the disclosure and use of 'spent' convictions. It is a list of professions and work roles which may be regarded as having an expectation of trust in relation to the public at large.
- 4** To be eligible for an Enhanced Check without barred lists – one that also checks additional information held by the police, such as complaints or third party referrals, which may be treated as relevant to the role in question – the role must be in the (Exception) Order 1975 and in the Police Act 1997 (Criminal Records) Regulations 2002. This is a more extensive list of roles.
- 5** To be eligible for an Enhanced check with barred list the role must meet the statutory definition of 'regulated activity'. DBS checks at this level can only be made where the role is specified within the definition of 'regulated activity'.
- 6** DBS checks, once made, are portable in that the check can be used for other roles discharged by the individual. Where an individual moves internally into a new role, a new DBS certificate is not generally required, unless the new role requires a higher level of check.
- 7** The DBS offers free applications to those that meet the Police Act 1997 (criminal records) Regulations 2002 definition of volunteering. The applicant must not:
 - benefit directly from the position for which the check is made
 - receive any payment (except travel and out-of-pocket expenses)
 - be on a work placement
 - be on a course that requires them to do this work
 - be in a trainee position that will lead to a full time role/qualification.

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Proposals

- 8** The Governance Committee welcomed the renewed opportunity for members to have a criminal records check. Given members' roles in the community and the level of access to residents and service users and the position of trust being a county councillor confers, the Committee is of the view that there would be benefits to members, the electorate they represent and the County Council as an organisation in having DBS checks for all members.
- 9** Whilst members do not carry out any of the roles specified in the above regulations (e.g. care worker or social worker) there are certain aspects of their role which may cross into the field of activity which may be considered relevant. The ability to visit establishments where children, young people or older people are present to receive services for which the Council is responsible may be considered in that light. Access to sensitive data should not, of itself, be regarded as creating situations where vulnerable individuals could be exposed to risk. The DBS process should not be approached lightly. It is intended to offer safeguards in relation to individuals who come into contact with young or vulnerable people as part of their 'usual' role.
- 10** The concept of the 'corporate parent' is one of statutory accountability in relation to children who are or have been looked after or who may be at risk of harm within the community. It does not equate to members carrying out or being expected to discharge day to day activities in relation to children – by seeing them or visiting establishments as of right. Such contact would usually be organised and supervised and should be occasional rather than a regular activity for elected members. The main role is to scrutinise the County Council's service arrangements and to hold service leads to account for outcomes agreed by members, to champion the interests of those who may rely upon the safeguarding and care systems of the Council.
- 11** The Committee concluded that there is a case to be made for the assurance offered by a DBS check – in that the public may expect all county councillors to be in a position of trust in relation to all vulnerable people for whom they are ultimately accountable and so to be subject to a DBS check as a minimum. It therefore recommends that all members should be subject to the standard DBS check with effect from the elections in May 2017. The Committee noted that a DBS check may give a false assurance – as it is a reflection of data held by the police at a point in time not a confirmation that a person does not present a risk. There may also be a risk that the DBS check may offer a 'licence' to make contact with young or vulnerable persons without other safeguards being in place and the Committee did not see the checks as a reason for relaxing expectations that visits to establishments would be unsupervised or unplanned. The Committee recommends that the checks should be renewed every four years to coincide with the quadrennial elections.
- 12** The Committee also recommends that those members who undertake specific roles (such as lead/Cabinet Members for Children's Services, for Schools and for Adults' Services) should be subject to an enhanced DBS check to reflect the frequency of contact with groups of service users or

establishments used for services for vulnerable people. Those members would be expected to be subjected to a DBS check as a condition of their appointment. The suggested roles to be subject to standard or enhanced checks are **set out at the Appendix**.

The process for managing personal data

- 13** The Committee asked that a system be adopted that gave assurance to the confidentiality of the information obtained through the DBS checks. A protocol will be settled between the Director of Law and Assurance and the Director of Transformation, Customer and Support Services (whose team processes the checks). In relation to members the only officers who will be given access to the data provided by the checks will be those two named Directors and the lead officer responsible for the DBS system within the County Council. In the event that the information reveals adverse data this will be shared with the member concerned and any limits on that member's discharge of their role as a member will be agreed – and escalated to the member's political group leader if need be. Any matters that cannot be agreed would be referred to a panel of members from the Standards Committee for resolution. If the information from a check would prohibit a member from discharging a specific role (those in the Appendix) the same referral and resolution process will be used but the relevant statutory Director (Children's Services or Adults' Services) and the relevant Cabinet Member (Adults or Children's) would also be notified in such cases – the Leader in the case of Cabinet Member appointments.

Resource and Human Rights Implications

- 14** Charges are made for DBS checks. The standard check costs £26 and the enhanced checks each cost £44. There are costs associated with managing the process of applications and checking the data produced. DBS checks are not time limited although they may be considered to lose validity over time and so a programme of renewal or extension is recommended.
- 15** There are Human Rights responsibilities engaged in so far as the carrying out of a DBS check infringes an individual's right to respect for private life given that both standard and 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.

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Recommended

- (1) That standard DBS checks for all members and enhanced DBS checks for members who undertake the specific roles set out at the Appendix, be introduced with effect from the elections in May 2017;
- (2) That the checks be renewed every four years to coincide with the quadrennial elections; and
- (3) That the Director of Law and Assurance be authorised to make changes to the terms of reference of the Standards Committee to include the resolution of issues concerning the discharge of member roles in light of DBS check responses.

Patricia Arculus

Chairman of the Governance Committee

Contact: Tony Kershaw 033022 22662

Background Papers

None

Specific member roles recommended for Enhanced DBS checks

1. Regulation 44 Visitor (Children's Homes Regulations 2015)

The role holder visits County Council residential establishments for children and undertakes visits in accordance with Ofsted guidelines. They are expected to be accompanied by a professional officer on the visits and it is that officer who leads on the Ofsted part of the process. They may on limited occasion have unsupervised contact with children.

2. Cabinet Member for Children - Start of Life

Role is a statutory one a 'lead member for children', responsible for policy and strategic decision making, which impacts directly on services for children. The member will have access to highly sensitive information about individuals. They meet young people in a range of forums.

3. Cabinet Member for Education and Skills

Role is responsible for strategic decision making, which impacts directly on services for children. They have access to highly sensitive information about individuals. They meet young people in a range of forums and will be expected to visit schools and learning establishments where children of all ages and levels of vulnerability will be present.

4. Cabinet Member for Adult Social Care and Health

Role is responsible for strategic decision making, which impacts directly on services for vulnerable adults. They have access to highly sensitive information about individuals. They will at times have access to vulnerable adults and may be expected to visit establishments where persons who may be considered vulnerable or in need of special care will be living.

5. Corporate Parenting Panel Members

Responsible for leading on the Corporate Parenting duty on behalf of all elected members and provide challenge and advice to relevant Cabinet Members on the discharge of their responsibilities. They have a link to the Children in Care Council and meet young people in care in a range of forums.

6. Adoption and Foster Panel Members

Attend Panel meetings and have access to highly sensitive information relating to individuals. They will not regularly see or visit the homes of children but are in a position of trust in relation to a very sensitive area of the Council's business.