Executive Summary

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, undertake work or hold positions or responsibilities which may bring them into contact with vulnerable persons.

Currently elected members are not required to have DBS checks with the exception of Adoption Panel membership. The Committee is being asked whether this position should be reviewed and, if so, whether the County Council should undertake basic checks for all members or whether, in relation to particular roles of members, there are grounds for making enhanced checks before a member is eligible to discharge those roles.

Recommendations

(1) That the Committee comments on the matters covered in the report; and

(2) That action is taken by officers in light of the Committee’s discussion to give effect to the arrangements the Committee wishes to see reviewed or implemented.

1. Background

1.1 A decision was last taken in 2012 on whether to complete DBS checks for elected members shortly after the introduction of the Protection of Freedoms Act 2012 which limited the circumstances in which DBS checks could be lawfully undertaken. The process used by the Council for DBS checks for staff is an e-bulk system that, at the time of implementation, only allowed the Council to undertake the highest level of checks (Enhanced DBS with barred lists checks). The system was not set up to undertake standard and enhanced without barred list checks (these are explained later in the report).

1.2 The DBS system was amended late in 2015 to allow all levels of checks to be undertaken where appropriate. This work was undertaken in response to various guidance documents issued by the DBS and also at the request of some council services, who wanted to check eligible roles that did not qualify for the highest level of checks.
2. **The DBS system**

2.1 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.

2.2 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 simply more extensive list of roles.

2.3 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’.

2.4 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.

2.5 The DBS offer 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

3. **Matters for consideration**

3.1 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.

3.2 Membership of the Adoption and Fostering Panels gives access to significant amounts of sensitive personal data relating to young people. These roles however will not bring members into regular contact with those young people. Access to sensitive data should not, of itself, be regarded as creating situations where vulnerable individuals could be exposed to risk.

3.3 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. It is expected that such contact will be ‘regular’ rather than occasional and that it would be unsupervised. In the absence of these elements it would not be expected that the DBS processes be exploited simply to provide a measure of assurance where none is needed.

3.4 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 holding or being expected to discharge day to day operational activities in relation to children – by seeing them or visiting establishments as of right. Such contact would usually be organised and supervised and may be considered to be an occasional rather than a regular activity for elected members. The main role is to scrutinise the County Council’s activities and 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.

3.5 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 could also be said however 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.

3.6 The other course would be to identify those specific roles (such as lead/Cabinet Members for Children’s Services, for Schools and for Adults’ Services) which may warrant 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 Appendix includes a potential checklist for such roles.

3.7 If the Committee is minded to seek the re-introduction of DBS checks for all members, or for a specified number of roles, then officers would need to make arrangements for a system to be implemented in time for the new Council after the May election. Alternatively the Committee could ask for further work to be undertaken in relation to the approach taken by other local authorities and to consult other agencies in relation to their expectations of members in their roles. The Appendix includes some current arrangements in place elsewhere. The Committee could also decide to defer any consideration of this until after the election and to invite a future Council meeting to consider the options.

4. **Resource Implications**

4.1 Charges are made for DBS checks. The standard check costs £26 and the higher 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 would be required.

5. **Impact of the proposal**

**Equality Duty, Crime and Disorder Act and Human Rights**

5.1 There are no specific implications of the proposals related to the public sector equality duty. In terms of the County Council’s responsibilities to reduce crime and disorder, it could be said that the imposition of conditions to eligibility to discharge certain roles as an elected councilor will contribute to the overall aims of reducing crime and disorder.

5.2 There are Human Rights responsibilities in so far as the carrying out of a DBS check infringes an individual’s right to respect for private life given that 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.

**Risk Management**

5.3 There are risks associated with enabling members to discharge their roles – specific or general – in relation to vulnerable persons without the County Council having subjected those members to DBS checks. The Council has no higher duty than the protection of vulnerable people to whom it owes a statutory duty of care and DBS checks could provide a first level of assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.

5.4 The counter risk is that DBS checks may give a false sense of assurance and confidence as to the risks posed by any particular person and that other measures and safeguards (such as supervision or requiring approval before elected members make direct contact with vulnerable people) would be regarded as unnecessary.

5.5 The risk to the Council’s reputation may also be a factor – in terms of whether a Council would be perceived as failing to protect vulnerable persons by choosing not to adopt a system of DBS checks for members.

**Tony Kershaw**  
Director of Law and Assurance  

**Contact:** Tony Kershaw, 033022 22662  

**Background papers** - none