

## **Disclosure and Barring Services (DBS) Update**

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### **1. Summary**

- 1.1. The Disclosure and Barring Service (DBS) helps prevent unsuitable people from working with vulnerable groups, including children.
- 1.2. This report updates the Committee on the Council's progress in securing Disclosure and Barring Services (DBS) checks for County Councillors following revisions to the policy agreed at Full Council on 29 November 2017 and a previous update provided to the Committee on 3<sup>rd</sup> July 2018.

### **2. Recommendations**

- 2.1. **The Committee is asked to note the current position regarding County Councillor DBS checks as detailed in paragraph 3.5.**

### **3. Background**

- 3.1 The DBS is a non-departmental public body, sponsored by the Home Office. It was formed in 2012 by the merger of the Criminal Records Bureau ("CRB") and the Independent Safeguarding Authority ("ISA") under the Protection of Freedoms Act 2012 which made changes to the arrangements for carrying out criminal records checks. 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).

There are various level of checks that can be applied for –

1. Basic disclosure certificate - shows any 'unspent convictions' someone may have in the UK. A basic disclosure shows a conviction record at a point in time, so there is no set time that it lasts for. Individuals can apply and pay for a basic Disclosure themselves. This is not the same as a DBS Standard check
2. Standard disclosure certificate - checks for spent and unspent convictions, cautions, reprimands and final warnings.
3. Enhanced disclosure certificate, this includes the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for.
4. Enhanced disclosure certificate with barred list checks, this is like the enhanced check, but includes a check of the DBS barred lists. Under the

legislation no elected member would qualify for this level of check.

**3.2** Legislation in 2012 significantly amended definitions of regulated activities with children and adults which impacted on the legal position of DBS checks in relation to members. It is reasonable to say that the legislative requirements allow for a degree of interpretation and this has contributed to policy variations around the country. The position of elected members is not a standalone position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. However the level of check that can be carried out will depend on the role that is being carried out. The Police Act 1997 (Criminal Records) Regulations 2002 provides that a member or co-opted member will be undertaking regulated activity if they:

(a) discharge, as a result of their membership, any education or social services functions of the Council;

(b) are a Cabinet Member (the Cabinet discharges education and social services functions) (this can be further defined as ‘decision makers’);

(c) are a Member of a committee of the Cabinet (there are currently no such committees); or

(d) they are a Member of a committee of the Council which discharges education or social services functions. (NB In our opinion Scrutiny Committee and Corporate Parenting Board members do not obviously come within this definition as they do not discharge a (decision-making) function).

Members falling under the above definition require an Enhanced DBS check and our view in the light of current practice and advice is that only Cabinet members qualify for certain for an Enhanced check.

**3.3** At the November 2017 Full Council meeting, Council unanimously agreed to extend the previous DBS policy to:

- Extend the mandatory requirement to have Enhanced DBS checks without barred list checks to: all Cabinet members; Junior Cabinet Members; members of the Adult and Children & Families Scrutiny Committees; members of the Adoption and Foster Panels; members of the Corporate Parents Board; and Members appointed to Panels or working groups relating to education or adult social care services.
- That all other members and co-opted members are required to undergo a Basic DBS check.
- That DBS checks required under (a) and (b) above will be carried out by the Council immediately following each Council election to ensure that such checks are renewed on a quadrennial basis.
- That the Monitoring Officer maintains a register of approved applications.

**3.4** These recommendations were based on our interpretation of the legislative requirements, some initial advice from the DBS service, emerging approaches of other councils and an assessment of the risks associated with the options

identified and explored.

### 3.5

As at 28<sup>th</sup> June 2018, 33 of the 55 County Councillors had completed a DBS Check, all of them at the Enhanced level due to the nature of their role at the time. These are detailed on a register of approved applications maintained by the Democratic Services team.

On 6<sup>th</sup> July the Committee was advised that following several amendments to the Scrutiny Committee Appointments and Memberships at May 2018 Full Council meeting, there were 4 Councillors who required an Enhanced Check as a matter of urgency in order to sit on the relevant Committee. These have all now been completed.

The remaining 18 County Councillors required a Basic DBS check, as none held any of the roles or sit on any of the Committees or Board as detailed in the first bullet point of paragraph 3.3.

A Basic DBS check requires access to an alternative system from the enhanced checks and two members of the Democratic Services team are now able to process and verify these applications. Of these 18 Members, 11 have now completed their DBS checks. The remaining 7 have open applications and the Members have been approached directly requesting the completion of the online application and to provide supporting documentation to the nominated verifiers. This is with the intention that all remaining 7 Councillors have received confirmation of an approved DBS application by the 31<sup>st</sup> October 2018. **Other Points to Note**

### 3.6

DBS checks carried out by the Council are only relevant for members acting in their capacity as elected members. If members 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.

In seeking to identify the appropriate options to propose to members in relation to the undertaking of DBS checks the practice amongst other comparable councils has been explored. Interestingly, the LGA does not have a policy position on this and there are a range of practices in councils. Most councils undertake Enhanced checks for those members with what they have interpreted as qualifying roles. A minority widen the policy out to all members with requirements that are a mix of Enhanced and Basic checks.

Council also noted at its' meeting in November 2017 that once the amended policy was agreed any member who refuses a DBS check under the Council's policy will be in breach of the Members' Code of Conduct for failure to comply with Council policy and will be subject to a potential range of sanctions which can be imposed in these circumstances.

## 4. Implications

- 4.1. Legal & Risk: In addition to the legislative requirements outlined above, it is relevant to note that requiring an Enhanced check is a substantial

interference with a person's right to respect for private life under Article 8 of the European Convention on Human Rights.

Either of the options set out in the paper put in place arrangements that will provide a level of assurance to Somerset residents that the Council is taking practical actions to reduce the risk of harm to vulnerable young people and adults. To have no or inadequate arrangements in place would not enable the Council to give such assurance in relation to the protection of individuals this could harm the Council's reputation. However, it is worth reflecting that even if the DBS checks are in place, it only gives an assurance at a point in time and in relation to previous behaviour. They provide no guarantee of future behaviour.

- 4.2.** Financial: The cost of an Enhanced DBS is £44 and the Basic Disclosure is £25. The estimated cost of undertaking checks for all members and co-opted members is around £2000. The main part of this cost will be incurred on a quadrennial basis giving an annual cost of around £500. This cost should be capable of being met from within the Members' budget.

## **5. Background papers**

- 5.1.** None

**Note:** For sight of individual background papers please contact the report author.