



## **REPORT OF THE MONITORING OFFICER**

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

#### **Purpose of the Report**

1. To seek agreement to changes proposed to the Policy on Criminal Record Bureau Checks for Elected Members as a result of changes made to the law by the Protection of Freedoms Act 2012.

#### **Information and Advice**

##### **Background**

2. The current policy was introduced in June 2008. Since the Policy was approved by Council there have been some important developments that affect the criminal records checking process and changes to the Council's constitutional arrangements which have resulted in the Policy becoming out of date. This report seeks to inform Policy Committee of the reforms and proposes updating the Council's Policy.

##### **Reforms to CRB and Independent Safeguarding Authority**

3. The Protection of Freedoms Act 2012 ("PFA") has 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").
4. 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).

##### **Changes to the definition of Regulated Activity**

5. 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”.

6. 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 redefines and reduces 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.
7. 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.
8. 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 in excess of 3 months’ imprisonment.

### **DBS Checks for Councillors and Council policy**

9. Previously the Council’s policy was to undertake a criminal records check for all Councillors, on the basis that they are:
  - a. are involved in discharging education and social care functions of the Council;
  - b. in an office which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services.
10. It is now appropriate for this policy to be reconsidered in light of the changes outlined above. A decision is required as to whether to retain the current approach of checking all Councillors on the basis that all members may be involved in discharging education and social care functions of the Council or may be asked to serve or substitute on a committee discharging those functions.
11. Safeguarding children, young people and adults is a key priority at the Council, and the important role Councillors and co-opted members play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised. The fact that all Councillors are checked may also strengthen public confidence.

12. Councillors have a wide range of responsibilities and take decisions in relation to core services relating to children and adults, for example, the corporate parenting role. These responsibilities may require Councillors to access sensitive information about, or have contact with, children and adults.
13. Although the duties and responsibilities of Councillors do not fall under the scope of “regulated activity” and Councillors are no longer required to be checked if not undertaking such activity, the Council can still request that DBS checks (excluding a check of the barred lists) be carried out.
14. There are two levels of DBS checks that can be carried out. Standard DBS checks which show disclose previous cautions, convictions, police reprimands and warnings relating to an individual. Enhanced Checks (without a check of the barred lists) provide the information resulting from a standard DBS check with the addition of relevant police information provided by the local police force. Chief police officers are asked to provide any information which they “reasonably believe to be” “relevant and ought to be included in the [enhanced DBS] certificate”, having regard to the purpose for which the certificate is sought.
15. To address concerns about proportionality, the Government has recently introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check.
16. In light of the changes to the law and the redefined scope of “regulated activity”, it is proposed that the Council carries out enhanced DBS checks for all Councillors in order to respond proportionately to the risk and reassure the public, and the draft policy attached reflects this. Checks are also proposed for any co-opted member serving on a committee which discharges education and social care functions of the Council.
17. A further proposed change to the Policy reflects a change to the administrative arrangements so that applications can be registered via the online DBS update service. Whereas paper applications used to be submitted by Democratic Services, Democratic Service will provide the necessary information to the Business Support Centre who will now submit the DBS applications to the DBS online; however, the results of any DBS checks will be provided, in confidence, directly to the individual affected. The Council will be advised that information has been sent to the individual concerned. The Monitoring Officer would contact that person directly and in confidence if a positive result was received.
18. DBS checks carried out by the Council are only relevant for Councillors acting in their capacity as County Councillors. If Councillors 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.
19. It is proposed that Committee approves the revised Policy set out in the Appendix.

#### **Other Options Considered**

20. In seeking to identify the appropriate options to propose to Councillors in relation to the undertaking of DBS checks for Councillors, other local authorities have been consulted to provide information on their respective positions and the recommendation proposed at the end of this report takes into account this research.
21. **To carry out no DBS checks.** This option would be a change to current Council Policy position and without any checks taking place it would not be possible to check an individual's background and determine whether an appointment to a particular role may be less suitable for them in light of a relevant disclosure. In order to protect those who are most vulnerable in society it is proposed that this option be rejected; the Council may be open to criticism if it did not take reasonable steps to assess and mitigate the risk.
22. **To carry out standard DBS checks for all Councillors.** Standard checks only reveal basic information concerning any unspent convictions and cautions, police remands and warnings; the enhanced level DBS certificate also contains any additional information held by the local police that they reasonably consider to be relevant to the individual's role. This information is useful to determine whether there are concerns under investigation locally which have not resulted in any formal action and any information provided may also help put details of any offence in context.
23. **To carry out enhanced DBS checks with a check of the barred lists.** This option was ruled out because it is not lawful to check the barred lists unless the individual who is being checked is going to undertake a "regulated activity" as amended by the Protection of Freedoms Act. Councillors would not be eligible by virtue only of their position as a Councillor or co-opted member.
24. **To carry out DBS checks in relation to specific roles which have some relationship with services that engage in "regulated activity".** Committees are responsible for decision taking therefore identifying specific individuals to DBS check would not be appropriate. Since Councillors engage in a variety of functions across the County Council it is more appropriate to check all Councillors.

### **Reason for Recommendations**

25. In light of the recent changes in law the Policy needs to be updated to reflect those changes.

### **Statutory and Policy Implications**

26. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **Financial Implications**

**27.** The cost of each enhanced DBS check is £44 and this will be met from the members allowances budget within the Policy, Planning and Corporate Services Department.

## **RECOMMENDATIONS**

1) The revised Policy set out in the Appendix be adopted.

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### **Constitutional Comments (SLB 25/03/2014)**

28. Policy Committee is the appropriate body to consider the content of this report.

### **Financial Comments (SEM 25/03/14)**

29. The financial implications are set out in the report.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Council Report of June 2008

- [www.nottinghamshire.gov.uk/dms/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1054/Committee/86/SelectedTab/Documents/Default.aspx](http://www.nottinghamshire.gov.uk/dms/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1054/Committee/86/SelectedTab/Documents/Default.aspx)

The Disclosure and Barring Service website contains links to relevant legislation and guidance published by other government departments and relevant organisations:

- [www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service)

Criminal records regime review

- [www.gov.uk/government/publications/criminal-records-regime-review](http://www.gov.uk/government/publications/criminal-records-regime-review)

Protection of Freedoms Act

- [www.legislation.gov.uk/ukpga/2012/9/contents](http://www.legislation.gov.uk/ukpga/2012/9/contents)

DBS checks eligibility guidance

- [www.gov.uk/government/publications/dbs-check-eligible-positions-guidance](http://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance)

DBS Code of Practice

- [www.gov.uk/government/publications/dbs-code-of-practice](http://www.gov.uk/government/publications/dbs-code-of-practice)

**Electoral Division(s) and Member(s) Affected**

All



## APPENDIX



### **Policy on Disclosure and Barring Service (“DBS”) Checks for Councillors and Co-opted Members**

#### **Background**

1. The effective date of commencement for this policy is 2 April 2014.
2. This policy complies with the exception to the Rehabilitation of Offenders Act 1974 and with the Disclosure and Barring Service Code of Practice.
3. This policy replaces all previous policies, decisions and/or precedents relating to criminal records checks for Nottinghamshire County Councillors and co-opted members.

#### **General Principles**

4. In light of the fact that Council and its relevant Committees and Boards discharge both education and social services functions, this Policy requires all Councillors to undergo enhanced level DBS checks. Co-opted members will be required to undergo enhanced level DBS checks if they are members of a Committee or Board which discharges any education or social services function of the County Council.

#### **The Process**

5. Within two months of the date of this Policy and thereafter for newly elected Councillors within two months of taking office following election, Councillors will be required to undergo an enhanced DBS check.
6. Within two months of the date of this Policy and thereafter within two months of a relevant newly appointed co-opted member becoming a member of Committee or Board that discharges any educational or social services function, the relevant co-opted member will be required to undergo an enhanced DBS check.
7. Checks will be processed by the Business Support Centre using the online DBS service following a request by the Council’s Monitoring Officer.
8. The relevant Councillor or co-opted member will be provided with a DBS certificate issued by the DBS. The Council will be notified of the disclosure and whether the DBS check is clear. This information will be returned to the Monitoring Officer. Where a check is not clear, for instance, it contains details of an offence, the Councillor or co-opted member will be required to provide a copy of the DBS certificate to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the content of the DBS certificate is

disputed and the dispute is raised with the DBS within 3 months of the date of issue, in which case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.

9. In accordance with Section 124 of the Police Act 1997 disclosure information will only be passed to those people who are authorised to receive it in the course of their duties. The Monitoring Officer will maintain a record of the date a check was requested, the date a response was received and a 'list' of all those to whom the disclosure or disclosure information has been revealed together with other relevant information. It is a criminal offence to pass this information to anyone who is not entitled to receive it.
10. Disclosure information will only be used for the specific purpose for which it is requested and for which the applicant's full consent has been given.
11. Records of the Disclosure Number will be kept electronically, along with the date of issue. Where Disclosure Information is made available this will be kept securely in lockable, non-portable containers and destroyed within six months in line with the DBS Code of Practice and the Data Protection Act.
12. Once the retention period has elapsed, any disclosure information will be destroyed by secure means. While awaiting destruction, disclosure information will remain in a lockable container. No photocopy or other image of the disclosure or any copy or representation of the contents of a disclosure will be kept. However, as stated above, the Monitoring Officer will maintain a register of the date of the request for and issue of a disclosure, the name of the subject, the type of disclosure requested, the position for which the disclosure was requested, the unique reference number of the disclosure and the detail of any decision taken as a result of the disclosure.

### **Portability**

13. DBS certificates are not portable other than those between individuals registered with the online DBS update service. Owing to current difficulties with the online DBS update service, DBS certificates obtained by individuals through the online DBS update service will not be accepted. This is currently under review.

### **The Use of Disclosure Information**

14. The existence of a criminal record or other information revealed as a result of an enhanced DBS check will not debar a Councillor from holding office.
15. In the event that the disclosure information received raises issues of concern, the Chief Executive advised by the Monitoring Officer and the Corporate Directors of Children, Families and Cultural Services and Adult Social Care, Health and Public Protection, as required, in consultation with the relevant Group Leader, will discuss with the individual Councillor the restrictions considered necessary, to safeguard children, young people and adults, on the positions held by that Councillor.

16. This policy will be reviewed every two years and updated as and when required as a result of changes in the law.