



Cabinet (Resources) Panel

15 October 2013

Report Title	Criminal Records checks for Councillors (DBS)	
Cabinet Member with Lead Responsibility	Leader	
Key Decision	No	
In Forward Plan	No	
Wards Affected	N/A	
Accountable Strategic Director	Keith Ireland (Delivery)	
Originating service	Future Practice (Legal)	
Accountable officer(s)	Fiona Davis Tel Email	Head of Service (Governance and Regulatory) 01902 55(4932) Fiona.davis@wolverhampton.gov.uk

Recommendation(s) for action or decision:

1. That all Councillors have a standard DBS check regardless of other checks they may have.
2. That the Constitution be amended to include details of the Council's policy to conduct criminal records checks for Councillors.

1.0 Purpose

- 1.1 This report considers the current position regarding criminal records checks for Councillors and seeks to recommend a way forward for the Council in respect of mandatory checks for all Councillors.

2.0 Background

- 2.1 The Council's current policy is to make a criminal records check when a Councillor has specific responsibility for children's services or vulnerable adults and where there is likelihood of close/one-to-one contact such as shadowing.
- 2.2 Research has been conducted into the stance adopted by other authorities. There is no uniform approach and no definitive guidance. Practice ranges between mandatory checks for all Councillors to an entirely voluntary approach left to the discretion of the individual.
- 2.3 Mandatory checks for all Councillors may seem burdensome and Councillors could regard it as unnecessary for them. However, by the very nature of their role in serving their constituents most Councillors will almost inevitably find themselves from time-to-time in positions where they have direct contact with children or more likely, vulnerable adults.
- 2.4 Whilst this position is not unlawful it may not be satisfactory. There may be a risk to the community and the Council's image and reputation if the Council does not take reasonable steps to assess and mitigate the risk of Councillors with convictions having access to vulnerable people.
- 2.5 The Disclosure and Baring Service gives no direction about Councillors, other than for those with specific responsibility for children's services or vulnerable adults. For all other Councillors this leaves a grey area to be decided by each authority.
- 2.6 The Key Roles of Councillors are stated in the Council's Constitution at Article 2, paragraph 2.3, it includes:
- b. represent their communities and bring their views into the Council's decision making process;*
 - c. deal with individual casework, respond to Constituents' enquiries and represent them fairly, promptly and impartially and act as an advocate for constituents in resolving particular concerns or grievances;*
 - f. maintain the highest standards of conducts and ethics*
- 2.7 The National picture is varied on CRB/DBS checking, some authorities insist on mandatory checks for all Councillors but many leave the matter to the discretion of the individual Councillor. The CRB policy of Stoke-on-Trent Council is checks are mandatory for all Councillors at first elections and repeated at each subsequent election cycle. Candidates are given due notice of the requirement prior to an election. It is believed Middlesbrough Council and Brentwood Council have a similar policy.

2.8 Many authorities conduct the checks only where needed i.e where there is the likelihood of close/one-to-one contact such as shadowing such as the policy of Waltham Forest Council.

3.0 Financial implications

3.1 The fee for a basic check is £26. Each enhanced check, suitable for councillors who have close contact with vulnerable groups, will cost £44. The estimated total cost is around £2,000 and will be funded from existing Democratic Service budgets.
[GE/03102013/N]

4.0 Legal implications

4.1 All councils have a statutory duty to safeguard children and vulnerable adults and, in the event of Serious Case Reviews, need to give account of their policy, as well as evidence of how they have implemented it.

4.2 By virtue of the Protection of Freedoms Act 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged to become the Disclosure and Barring Service (DBS). The primary role of the DBS is to prevent unsuitable people from working with vulnerable groups, including children.

4.3 A Disclosure and Barring Service (DBS) check forms are part of the wider safeguarding process. It helps individuals and organisations decide whether a person is a suitable candidate by providing information about an applicant's criminal history.

4.4 The process by which the DBS provides criminal data is called DBS certificate or a DBS check (previously CRB check). There are three levels of DBS checks, standard, enhanced and enhanced with barred list checks.

4.5 As part of introducing the new Disclosure and Barring Service, the government has reformed the definition of Regulated Activity i.e. activity that you must not do if you are barred from working with children or vulnerable adults and now relates only if work is done regularly by the same person frequently (once a week or more often) or on 4 or more days in a 30 day period.

4.6 Work that was previously Regulated Activity for work with children but will no longer be regulated, includes:

- Activity supervised at reasonable level*
- Health care not by (or directed or supervised by) a health care professional*
- Legal advice*
- “Treatment/therapy” (instead “health care” unless this is “advice/guidance on wellbeing*
- Work in “specified places” which consists of occasional or temporary services, e.g. maintenance (not teaching etc.)*
- Volunteers in “specified places” supervised at reasonable level*
- All “positions” e.g. governors, trustees etc.*
- Work carried out by inspectorates.*

- 4.7 Councillors need to undergo a DBS check when undertaking Regulated Activity as defined in the Safeguarding Vulnerable Groups Act 2006 which has been amended by the Protection of Freedoms Act 2012
- 4.8 There is no legal requirement to undertake DBS checks in respect of all elected Councillors but it is becoming best practice and is now common in several local authorities. This is encouraged under safeguarding principles
- 4.9 There are two main reasons for extending DBS checks in respect of all Councillors. First, the Council has a general duty of care to all its residents. Additionally, the Council has specific duties in respect of certain groups.
- 4.9.1 Extending DBS checks to all Councillors will reduce the risks to the Council of abuse occurring in the course of Council duties. More importantly, it will also offer greater protection to children and vulnerable adults.[WT/00011900/B]

5.0 Equalities implications

- 5.1 Should the Council wish to adopt a policy which requires all Councillors to undergo a criminal record check, then there will be no direct equality implications.

6.0 Environmental implications

- 6.1 None

7.0 Human Rights implications

- 7.1 The advantages in terms of good practice and safeguarding vulnerable people have to be balanced against matters such as the individual Councillor's right to privacy and confidentiality, and some Councillors may have concerns as to the wider implications of requiring DBS checks of all Councillors.
- 7.2 DBS checks relate only to criminal records, so civil matters such as county court Judgements will not be disclosed in any checks.
- 7.3 The Council has to ensure that information disclosed as a result of a DBS check is handled and stored appropriately.
- 7.4 If DBS checks do disclose convictions or other information, this information will be treated in the strictest confidence.
- 7.5 If a DBS check on a Councillor did result in disclosure, consideration would be given as to whether the information disclosed would have any direct relevance to the Councillor's duties and obligations as a Councillor.
- 7.6 If it was considered that the disclosure could have a direct relevance to the Councillor's Duties, then they would then be advised accordingly. In such an event the Councillor would be given the opportunity to provide background details of the circumstances relating to any information disclosed.

7.7 Some Councils, election agents are informed of these requirements so that prospective candidates are aware prior to standing for election.

8.0 Schedule of background papers

8.1 Wolverhampton City Council's current Policy on criminal records checks.