

Briefing Note

Title: DBS Process for Councillors

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Job Title: Head of Governance and Civic Support Manager

Intended Audience: Internal ☒ Partner organisation ☐ Public ☐ Confidential ☒

1.0 Purpose

- 1.1 To provide an overview of the current Disclosure and Barring Service (DBS) process set out in law by the Government and detail if any lobbying of Government has taken place by the LGA or other Council's in England.

2.0 Background

- 2.1 A basic DBS check is a criminal record check that you can request for yourself. You may also be asked to request a basic check by your employer, guidance is held online here: [Basic DBS checks: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/basic-dbs-checks)
- 2.2 The DBS was established to provide a standardised delivery of information on criminal records and provides a carefully regulated service which enables organisations to gain access to important criminal and other information for selection purposes. This information helps organisations to identify elected members who may be unsuitable for certain kinds of work, thus providing protection for children and vulnerable people.
- 2.3 The Council uses the DBS to obtain information about elected members to assess their suitability for being an elected member of the Council. The Council complies fully with the DBS Code of Practice and does not discriminate unfairly against any individual on the basis of a conviction, or any other information revealed as a result of a DBS disclosure. The DBS Code of Practice can be found here: <https://www.gov.uk/government/publications/dbs-code-of-practice>
- 2.4 The Council uses the DBS checking service to help to assess the suitability of elected members for positions of trust, the Council complies fully with the DBS Code of Practice. It also complies fully with its obligations under the General Data Protection Regulation (GDPR), Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information and has a written policy on these matters, which is available to those wishing to see it on request.
- 2.5 At a recent meeting of the Governance and Ethics Committee (5 October 2023), Councillors felt that the DBS check should be at the enhanced level for all and asked that Officers review and write to the Government to lobby for change. Requiring all

councillors to have an enhanced DBS check would need a change in the law as currently a councillor is not required to have any DBS check.

3.0 Eligibility to ask for an enhanced check

3.1 There are 4 types of DBS check – basic, standard and two types of enhanced checks. Standard and enhanced checks can only be carried out for certain roles, or roles that include certain activities. The Council may want to carry out enhanced checks and to help it determine whether or not it is able to, it will be necessary to consider **The Police Act 1997 (Criminal Records) Regulations 2002, regulation 5A**, which sets out the circumstances in which this is possible.

The regulations make clear that a request can be made for the purposes of these three categories only:

- (a) considering the applicants' suitability for Working with children, or
- (b) considering the applicant's suitability for working with adults, or
- (c) various miscellaneous roles.

3.2 The regulations explain in more detail the type of activity which comes under each categories, but this part is very lengthy and this is where you are better to refer to the eligibility guides.

In short:

- in relation to children this can include various activities relating to childminding, social work, further education, and working in certain households. It also includes regulated activity with children which is defined here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf
- in relation to adults, a member would need to be in contact with certain adults (including within various defined settings) a number of times per month to provide treatment or activity, or to provide day to day supervision or management of a such a person. This can include undertaking regulated activity with vulnerable adult which has its own definition and which is explained here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf
- in relation to the various miscellaneous roles listed, the work undertaken by members is not included.

4.0 DBS Requirements for Councillors at the Council and The Police Act 1997, Section 113B

4.1 City of Wolverhampton Council has a policy that all of its councillors require as a minimum a standard DBS check and, as per what the law currently allows, an enhanced check is required for the small number of councillors whose roles as assigned to them by the local authority put them in regular contact with children or vulnerable adults such as the Cabinet Members for Children and Young People or Adults and Wellbeing. It would currently be illegal for the council to insist that a

councillor requires an enhanced DBS check if their council role does not put them in regular contact with children or young people.

4.2 **The Police Act 1997 section 113B** states that the Secretary of State must issue an enhanced criminal records certificate to any individual who makes an application. The application *“must be accompanied by a statement by the registered person [the Council in this case] that [they are entitled to request it, as the purpose for which it is needed qualifies for an enhanced check]”*

4.3 As mentioned, those undertaking a DBS check on relevant persons can only request a check on an individual they are legally allowed to do so. The **Police Act 1997 section 123** states that:

“(2) A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.”

4.4 So, if you made an application for a member even though their work does not qualify them for an Enhanced certificate, you would be committing an offence.

5.0 Information on Lobbying and other Councils

5.1 As part of the Government's strategy to tackle violence against women and girls, the Home Office commissioned the National Police Chiefs' Council lead for child protection and abuse investigation, Simon Bailey, to carry out a review of the effectiveness of the DBS regime.

5.2 The review identified several areas where the regime could be strengthened, and made nine recommendations. After consulting with officials from the Department for Levelling Up, Housing and Communities (DLUHC), Simon Bailey found that there is “no uniformity of practice” among councils in relation to obtaining criminal record checks for safeguarding purposes.

5.3 He said it appears that some councils obtain enhanced criminal record checks for all elected members, while others obtain the checks in respect of councillors prior to their appointment “to any committee involved in decisions on the provisions of children's services or services for vulnerable adults”, to assess their suitability for involvement in those decisions.

5.4 He added: “It appears that there are some councils which do not obtain DBS checks at all”, noting that the lack of uniformity in approach is “in need of correction”.

5.5 In the report's fifth recommendation, Mr Bailey suggested that an enhanced criminal record check is made mandatory for all councillors in Unitary and Upper Tier Authorities who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults.

5.6 In March 2023, Sandwell Council agreed on the principle that all councillors should be eligible for an enhanced DBS check, which would provide further reassurance to

the public and a motion was passed that the Leader of the Council, with cross-party support, would write to the Minister for Safeguarding to consider the role of a Local Councillor as automatic qualification for Enhanced Checks.

- 5.7 In April 2023, as reported by the [Manchester Evening News](#), the Leader of Wigan Council informed a meeting of the Full Council that he had requested their Chief Executive write to Government requested a change in the law to require all councillors to be subject to an enhanced DBS check to be able to hold office.

6.0 Other Legislation for Elected Officials in Public Office

- 6.1 There are other rules in place already to ensure the wrong people don't get into public office. The Local Government Act 1972 states that people convicted of a crime who receive a prison sentence (or a suspended sentence) of three months or more in the five years before election day are unable to stand in the election.
- 6.2 On top of this, candidates for local elections must sign declarations stating they aren't disqualified from standing in the election under Section 80 of the Local Government Act 1972. Relevant disqualifications are:
- *You have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day.*
 - *You have been disqualified under the Representation of the People Act 1983 (which covers corrupt or illegal electoral practices and offences relating to donations) or under the Audit Commission Act 1998.*
- 6.3 The Local Government Disqualification Act updates the disqualification criteria for local authority members (councillors, mayors of combined authorities, the mayor of London and London assembly members) to explicitly disqualify individuals who are subject to relevant notification requirements or orders due to sexual offences from standing for or remaining in office. The Act applies to certain positions in local government in England and came into force on 28 June 2022. Details can be found here on the LGA website: [Get in on the Act: The Local Government \(Disqualification\) Act 2022 | Local Government Association](#)
- ## **7.0 Letter to the Home Secretary**
- 7.1 The last meeting of Governance and Ethics Committee asked for a draft letter to be prepared (see below). Should the committee agree to send the letter this would be sent from the Cabinet Member for Governance and Equalities.

'Dear Home Secretary,

I am astonished that there is no legal requirement for elected councillors to require a Disclosure and Barring Service (DBS) check. Local councillors are at the centre of their local communities and encounter all types of people, including vulnerable young people and adults, each and every day.

Despite this fact, the law as it stands makes no provision for councillors to require even the most basic DBS check to carry out their roles. As the Cabinet Member for Governance and Equalities at City of Wolverhampton Council, I believe that the law needs to change urgently, not only to require a DBS check for all councillors, but that this check must be at the enhanced level.

An enhanced check means that not only unspent and relevant spent convictions would be disclosed to the authority, but also any additional relevant information which the police considered may indicate that the person could be a potential risk to children or vulnerable adults.

I think the public would be rightly concerned to learn that local councillors are going about their business, which could put them in direct contact with children and vulnerable adults, without necessarily having passed any sort of DBS check. There will be assumption from the public that elected councillors are figures who they can trust and without a requirement for an enhanced DBS check how could anyone have that reassurance?

City of Wolverhampton Council has a policy that all of its councillors require as a minimum a standard DBS check and, as per what the law currently allows, an enhanced check is required for the small number of councillors whose roles as assigned to them by the local authority put them in regular contact with children or vulnerable adults such as the Cabinet Members for Children and Young People or Adults and Wellbeing.

It would currently be illegal for the council to insist that a councillor requires an enhanced DBS check if their council role does not put them in regular contact with children or young people. However, this is where our issue lies. Just because the council has not given them such a role, it is simply wrong to think that they will not come into regular contact with such people by virtue of the role that society gives them.

Councillors get invited into people's homes, we meet the public at surgeries, we are recognised and people come up to speak to us on the street, we are invited to places of worship, community events – the list is endless. It does not bear thinking about that someone whom the police had grounds to think might be a risk to vulnerable people was having direct contact with the public and nobody was aware of any danger posed by them because no enhanced DBS had ever been carried out. The public must be able to hold their local representatives in high regard and esteem. Knowing that every elected councillor has passed an enhanced DBS check would provide a greater level of assurance than currently exists. Nobody is naive enough to think that having a valid DBS check is a panacea resulting in no harm ever coming to a child or vulnerable adult, however it is surely an effective tool in vetting the type of person who can become a local representative.

I know that we are not the first local authority to raise this issue with you and I am happy to add my voice to calls to change the law to require all local politicians to undergo an enhanced DBS check. The law as it stands does not recognise or appreciate the role that councillors have in their communities and this has to change in order to protect children and vulnerable adults.

*Cllr Paula Brookfield
Cabinet Member for Governance and Equalities
City of Wolverhampton Council'*