

## **Disclosure and Barring Services for Councillors – Briefing Paper**

### **Introduction**

At the meeting of the Audit Committee on 27 July 2018 (Minute \*33), in considering the matter of a Disclosure and Barring Service (DBS) check for all Members, it was RESOLVED that the issue of a DBS check for all Members be considered by the Procedures Committee.

### **Background / Current Position**

This issue has been previously considered by the Procedures Committee and the current process is that such checks are done on an exception basis, when required and in the opinion of the County Solicitor.

This has worked well in the past and as an example, the Cabinet Member with responsibility for Children's Services has had such a check and more recently a check was undertaken for a member who was taking on responsibility of undertaking reg 44 visits at Atkinson.

The Council is of course aware that Members may have had DBS checks, albeit in another capacity, for example if they are a school governor etc.

Below is a range of criteria in respect of when such checks should be undertaken and the appropriate legislation

### **Eligibility for Disclosure and Barring Service checks for Councillors**

The position of Councillor is not in itself a position named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Therefore, there is no eligibility for a DBS certificate at a Standard or Enhanced level, solely on the basis of being a Councillor, they have to be carrying out further activities prescribed in legislation.

The Protection of Freedoms Act (PoFA) 2012 amended the definitions of regulated activity with children and adults. This had an impact on the level of DBS certificate that is available for some local authority roles, which may include some Councillors. The level of DBS certificate that a Councillor can be asked to apply for depends on the activities that each individual Councillor carries out. As advised, it is important to note that not all Councillors will be carrying out functions that mean their role is eligible to be asked to apply for a DBS certificate.

The Exceptions Order and the Police Act 1997 (Criminal Records) Regulations 2002 both include entries that refer to carrying out a role which would have met the definition of regulated activity before it was changed by PoFA 2012. This means that the ability to ask for an enhanced DBS certificate exists in relation to anyone carrying out any of the activities included in this definition. These are now referred to in all DBS guidance as the definitions of work with children and work with adults.

**Work with Children (Councillors who carry out education or social services functions relating to children)**

A Councillor is only eligible for an enhanced DBS certificate without DBS barred list checks if they meet the specific legislative criteria from the Safeguarding Vulnerable Groups Act 2006 set out below:

A person is a member of a relevant local government body if –

- i. he is a member of a local authority and discharges any education functions, or social services functions, of a local authority;
- ii. he is a member of an executive of a local authority which discharges any such functions;
- iii. he is a member of a committee of an executive of a local authority which discharges such functions;
- iv. he is a member of an area committee, or any other committee, of a local authority which discharges such functions.

This includes a reference to any sub-committee which discharges any such functions.

If the above conditions above are met, then a Councillor can be eligible for an enhanced DBS certificate without a check of the children's barred list. This is because the individual is carrying out a specific function included in the definition of work with children.

**Work with Adults (Councillors who carry out social services functions relating to adults)**

A Councillor is only eligible for an enhanced DBS certificate without DBS barred list checks if they meet the specific legislative criteria from the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013 definition of work with adults, set out below.

The exercise of a function of a person who is;

- i. a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service, as specified in the legislation;
- ii. a member of an executive of a local authority which discharges any such functions;
- iii. a member of a committee of an executive of a local authority which discharges any such functions; or
- iv. a member of an area committee, or any other committee, of a local authority which discharges any such functions;

If any of the conditions above are met, then a Councillor can be eligible for an enhanced DBS certificate without a check of the adults' barred list. This is because the individual is carrying out a specific function included in the definition of work with adults.

### **Councillors who have contact with vulnerable groups**

Councillors will be subject to an Enhanced DBS check if they carry out certain functions within their portfolio which will bring them into contact with vulnerable groups. Typically, this will include where Councillors are subject to an Enhanced DBS check, (which can include a barred list check), because they are in a role working with children or vulnerable adults, or they frequently visit specified settings, such as schools, children's centres, residential homes or respite centres.

Councillors may also be subject to an Enhanced level check if they carry out other responsibilities in the community, such as being School Governors, Trustees, or volunteer with organisations which bring them into contact with vulnerable groups.

### **Councillors who do not carry out any of the specific educational and/or social service functions**

Councillors who do not carry out any of the specific educational and/or social service functions as described above, are not eligible for a Standard or Enhanced DBS check. Councillors in this position may attend community events, take surgeries, or visit local residents in their own homes, have access to the general public including children, but these activities do not meet the legislative criteria to be eligible to apply for a Standard or Enhanced DBS certificate. However, a Basic level check can be requested for these Councillors.

Historically Devon County Council have only checked Councillors who have contact with vulnerable groups. It has not been a policy to DBS Councillors or staff solely on the basis of their involvement on committees discharging educational or social services functions.

### **Costs of DBS**

The costs to Devon County Council for an Enhanced level check is £46.50 and for a Basic level DBS check it is £26.50, these costs include the small fee for using an online DBS application service.

### **Contact for enquiries:**

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Background Papers - Nil