

Report of the County Solicitor

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation**

To review and agreed the proposed Disclosure and Barring Service (DBS) Risk Assessment, attached as an appendix to this Report, incorporating the Risk Assessment process into the Safeguarding Guidance Note for Councillors, and ask that the Committee recommends the changes to the Constitution to the Council.

**1. Introduction and Background**

- 1.1 At the meeting of the Audit Committee on 27 July 2018 (Minute \*33), in considering the matter of a DBS check for all Members, it was RESOLVED that the issue of a DBS check for all Members be considered by the Procedures Committee.
- 1.2 The Procedures Committee therefore considered the matter on 10<sup>th</sup> September 2018 (Minute \*44) and, to aid discussion, a factual briefing paper was prepared which outlined the position of a Councillor in respect of DBS checks and when it was appropriate to carry them out (Basic and Enhanced checks), in line with legislation.
- 1.3 The Committee noted that the role of 'Councillor' was not one named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, therefore there was no eligibility for a DBS certificate solely on the basis of being a Councillor (there would have to be further activities undertaken as prescribed in the legislation).

**2. Procedures Committee**

- 2.1 The Procedures Committee RESOLVED that the Council adopt a policy of conducting a Basic DBS check for all Members of the Council, notwithstanding a Councillor may undertake certain roles which, in line with the legislation, required them to undergo an enhanced DBS check in relation to their contact with vulnerable adults or children or both or, is a member of a Committee which discharges a relevant function.
- 2.2 The Committee also asked that representations be made to Government regarding the current criteria which excludes the position of Councillor as named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (meaning there was currently no eligibility in law for requiring a DBS certificate, solely on the basis of being a Councillor). To date, no response has been received.
- 2.3 It was also agreed that Officers prepare a Risk Assessment that could be used to assess and record the risks of a Councillor in their role, where a DBS certificate shows relevant convictions or other relevant information.

**3. Review**

- 3.1 The attached Risk Assessment is proposed to form part of the Safeguarding Guidance for Councillors, which although published in the Constitution, doesn't technically form part of it. For ease of reference, the document is attached.

3.2 The content of the Risk Assessment has been consulted upon with colleagues in both Legal Services and Human Resources.

3.3 The aim of the Assessment is to be light touch, but also safeguarding and protecting both vulnerable children and adults and also the reputation of the Council.

**4. Next Steps**

4.1 Once the Risk Assessment process has been agreed and determined, the Council will start to progress the DBS checks for all Members of the Council, in line with the newly agreed policy.

**5. Financial considerations**

5.1 No financial implications have been identified.

**6. Risk management considerations**

6.1 No unimaginable risks have been identified that have not been considered as part of the risk assessment process.

**7. Equality, Environmental Impact and Public Health Considerations.**

7.1 No equality, environmental impact or public health implications have been identified.

**JAN SHADBOLT**

**Electoral Divisions: All**

Local Government Act 1972: List of Background Papers:

None

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## **A COUNCILLORS' SAFEGUARDING GUIDANCE NOTE AND DBS CHECKS**

*[NB: This Guidance Note does not form part of the Constitution or the Members' Code of Conduct but is reproduced here for convenient reference].*

A Councillor's behaviour is in effect already covered by the Council's Code of Conduct (as required under the Localism Act 2011) - which provides recourse to any member of the public wishing to make a complaint against a Member's behaviour - that Code, however, does not make specific mention or reference to allegations about safeguarding.

The Code of Conduct, in the main, only applies to the conduct of a Councillor when acting or giving the impression that they are acting in their official capacity; it may not therefore always cover them in their 'private' life. Moreover, while the Council's Monitoring Officer has a duty to advise and consult an Independent Person appointed under s28(7) of the Localism Act 2011 on any action to be taken arising from a complaint on the conduct of members under the Code of Conduct it would be inappropriate to do so in any case where safeguarding issues had been raised without first referring to the Council's safeguarding procedures.

Councillors should operate within a safe working environment for children (and adults) at all times. If Councillors adhere to common sense principles of safe working this will not only benefit the work and reputation of the Council but help protect them (Councillors) as well.

Councillors should therefore ensure that they do not have – or are not put in the position of having - unsupervised contact with children and young people or adults. Avoiding any such circumstances/unsupervised contact with vulnerable persons will help prevent the risk of any allegation of inappropriate behaviour being made.

Any suspicions of poor practice, abuse or inappropriate behaviour observed or reported **of a County Councillor** (by whatever means or route) should in the first instance be reported to the County Council's Monitoring Officer, who shall take all necessary steps as indicated below including all appropriate notifications.

If the allegation is in relation to potential safeguarding concerns relating to the individual in their capacity, either as a councillor, or in any other working or volunteering role with children, the County Council's Monitoring Officer will make a referral to and liaise directly with the Local Authority Designated Officer (LADO), who is responsible for managing and overseeing allegations against adults working with children.

If the allegation relates to safeguarding concerns regarding the individual's behaviour with children in their personal life (e.g.: as a parent or relative or friend), the County Council's Monitoring Officer will ensure a referral is made to the Devon Multi-Agency Safeguarding Hub (MASH). In these circumstances, Children's Services would undertake any assessment as appropriate and, if following this, concerns remain which could impact on the individual's role as a Councillor, also make a referral for LADO consideration.

It is recognised that not all Councillors will have direct contact with children and young people (or vulnerable adults) as part of their role although some may – either by virtue of their day-to-day representative role **or** as a Member with 'special responsibilities' (e.g. a Cabinet Member or Chair of Committee) - in which case they may have been the subject of a criminal records check.

*[NB: The County Council's LADO can be contacted at: [ladosecure-mailbox@devon.gcsx.gov.uk](mailto:ladosecure-mailbox@devon.gcsx.gov.uk) or on 01392 383000]*

### **DBS Checks and Risk Assessment**

In line with current policy (Procedures Minute 44 of 10 September 2018), the Council will conduct a Basic DBS check for all Members of the Council, notwithstanding a Councillor may undertake certain

roles which, in line with the legislation, required them to undergo an enhanced DBS check in relation to their contact with vulnerable adults or children or both or, is a member of a Committee which discharges a relevant function, for example those who sit on Foster Panels, undertake Reg 44 visits and the relevant Cabinet Members with responsibility for Adults and Children's Services.

In the event of a DBS check of an employee resulting in a positive disclosure, the Council's Disclosure & Barring Service Policy (<https://inside.devon.gov.uk/task/disclosure-barring-service/disclosure-policy/>) outlines the action to be taken.

Whilst this Policy does not make specific reference to Councillors, should a DBS check of a Councillor result in a positive disclosure then - and in the spirit of the Council's Disclosure & Barring Service Policy - the following course of action must be undertaken in line with the approved Risk Assessment, attached as appendix 1.

It is the responsibility of the Council's Monitoring Officer to ensure all appropriate actions, guidance and notifications are taken in such cases.

The Monitoring Officer will first undertake an assessment\* of the risk to both vulnerable adults and / or children and the reputation of the Council, the risk of the Councillor (the subject member) continuing to exercise any existing or proposed role - either on a conditional basis or with additional safeguards in place - or whether it would be incompatible with the circumstances of the case for the subject member to continue in a particular role at all.

The Monitoring Officer will also review the circumstances of the case with reference to the Code of Conduct to determine whether there are any political and/or standards issues involved and any case to answer.

Thereafter and following consultation with the Head of the Paid Service (and Chief Officer for Adult and/or Child Protection, if necessary) the Monitoring Officer will subsequently advise the Leader of the Council and the Leader of the relevant Party Group of any proposed course of action to be taken and will then also discuss that proposed course of action with the subject member and explain the reasons therefor.

*(\*Any such risk assessment must necessarily require an objective common-sense approach, having regard not only to the Council's responsibilities for safeguarding and corporate parenting but the need for Councillors to maintain the highest standards of conduct in both their personal and professional lives. Also important is the need for any person in public life and holding a position of special responsibility to be extra vigilant.*

*The Monitoring Officer can also consider the withdrawal of facilities/access and, exceptionally, any action required to ensure the continued protection of others as a result of the disclosure or of any action the Council may decide to take as a result of that risk assessment, including confidential notification to a third party to ensure that continued protection of others, consulting with the Standards Committee as appropriate.*

*For Councillors who may be carrying out Regulated Activity (activity in Regulated Establishments such as schools), if the Councillor has a conviction for a relevant (autobar) offence, or if they are barred, this would prevent them from carrying out Regulated Activity. Additionally, in these circumstances the Council would have a duty to refer to the DBS for a potential barring decision. The Monitoring Officer will seek HR advice in these circumstances.*

*If a Basic or Enhanced check reveals that a Councillor has been sentenced to prison for 3 months or more (including suspended sentences) during the last five years or has been convicted of a corrupt or illegal practice by an election court, then their seat would be lost.*

October 2018

## Appendix 1

### DBS Risk Assessment Checklist

Disclosure Certificate No:													
Full Name:													
Position check undertaken for:	Councillor												
Level of Check	Basic / Enhanced												

### RISK ASSESSMENT

#### Monitoring Officer / Questions to Consider as part of the Risk Assessment

Question	Comments
Does the Councillor confirm that the information disclosed in the DBS Disclosure is accurate?	
What is the individual's attitude to the offence now?	
Will the Councillor be working unsupervised?	
What preventative measure(s) could be put in place to reduce the risk?	
Have circumstances changed since committing the offence(s)? What has the individual done to reduce the risk of re-offending i.e. rehabilitation, improved education, moved location, changed associates etc	
At the time of the offence were there any mitigating circumstances? (ie financial / domestic / alcohol / drugs	
Was this a 'one-off' offence? or repeat offending?	

<p>What level of contact is there with children or vulnerable adults i.e., unsupervised.</p>	
<p>What level of personal contact is there with the public.</p>	
<p>Describe what preventative measure(s) could be put in place to reduce risk?</p>	

**PART B – MONITORING OFFICER – ANY FURTHER ACTIONS**

Please state any additional safeguarding measures required such as building restrictions, or additional safeguards to be implemented by the Council and / or referral to the Standards Committee. Examples below .....

*(NB; Notwithstanding the guidance relating to Regulated Activity and Sentencing referred to earlier)*

- Speak to Leader of the Council and / or Group Leader
  
- Consideration of Committee / Sub Committees / outside bodies appointments
  
- Exclude or restrict the Subject Member’s access to some or all County Council premises;
  
- Any training required
  
- Withdraw facilities (e.g. computer access).