

Disclosure and Barring Service (DBS) – Bailey

Report of the Director of Legal and Democratic Services

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

1.1 That the Committee be asked to

(a) note that the Report and Recommendations of the independent review carried out by Simon Bailey CBE, QPM contains a recommendation of enhanced DBS checks for all Councillors in Unitary and Single 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

(b) further note that the recommendation of this Report would require legislation and therefore delay any implementation; and

(c) recommend the Council update its DBS Policy to reflect this good practice recommendation for enhanced criminal record checks being mandatory for the Cabinet, given their role in making decisions on the provision of children's services or services for vulnerable adults.

2) Background / Introduction

2.1 At the meeting of the Audit Committee on 27 July 2018 (Minute *33), in considering the matter of a DBS check for all Members, they RESOLVED that the issue of DBS checks for all Members be considered by the Procedures Committee.

2.2 The Procedures Committee considered the matter on 10th 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.

2.3 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).

2.4 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, as a member of a Committee which discharges a relevant function.

2.5 In practice, this means that all Councillors undergo a basic DBS check on election or re-election, with the relevant Cabinet Members who have responsibility for SEND Improvement, Children's Services and Adults Services undergoing enhanced checks. Additional enhanced checks are also done for those on foster panels and those undertaking regulation 44 visits.

3) Proposal

3.1 As part of the Government's strategy to tackle violence against women and girls, the Home Office commissioned Simon Bailey (former Chief Constable of Norfolk Constabulary, and National Police Chiefs' Council lead for child protection and abuse investigation) to carry out a review of the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults.

3.2 He concluded that the disclosure and barring regime is delivering its mission of helping employers and organisations to make safer employment decisions, but he identified several areas where the regime could be strengthened.

3.3 Whilst the Report highlighted they didn't have the resources to consult all relevant Councils, to establish what is the current position and practice in relation to obtaining criminal record checks for councillors, he concluded, after consulting officials from the Department for Levelling Up, Housing and Communities (DLUHC), there was no uniformity of practice among Councils in relation to obtaining criminal record checks for safeguarding purposes.

3.4 The Report referred to the role undertaken by Councillors as 'Corporate Parents' and that some Councils obtained higher level (enhanced) criminal record checks for all elected members on this basis. However, the Report commented that this concept did not confer eligibility. Other Council's obtained checks in respect of Councillors 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.

3.5 It was also noted that some Councils did not obtain DBS checks at all.

3.6 The Report (on this issue) concluded that it was not necessary that enhanced checks should apply to all Councillors, but rather to those who are being considered for appointment to any Committee involved in decisions on the provisions of children's services or services for vulnerable adults.

3.7 Recommendation 5, as outlined in the Report, stated,

An enhanced criminal record check is made mandatory for all councillors in Unitary and Single 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. I accept that this would require legislation and therefore some inevitable delay, so I further recommend that these authorities are encouraged to adopt this procedure as best practice pending legislation.

3.8 The Report further concluded there should be consistency in the practice adopted by Councils in relation to DBS checks and that checks should be carried out where appropriate.

3.9 The recommendation of this Report suggests it would be good practice to ensure all Members on a decision making body relating to children and adults undergo an enhanced check, which means the Council's Cabinet.

4) Strategic Plan

4.1 This proposal aligns to the Council's Strategic Plan 2021 – 2025. The proposal supports the commitment of ensuring that the Council makes good decisions and is transparent and supports being a trusted and inclusive Council that hears the voices of communities and listens and learns.

5) Financial Consideration

5.1 The cost of a Standard DBS check is £18 and an Enhanced DBS check is £38, therefore there is a small financial cost (£140) of seven additional Cabinet Members being enhanced checked (the Cabinet Members for both Children's and Schools, Integrated Adults Services and SEND Improvement are all currently enhanced checked).

6) Legal Considerations

6.1 As referenced above, 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 must be carrying out further activities prescribed in legislation.

6.2 The Protection of Freedoms Act (PoFA) 2012 amended the definitions of regulated activity with children and adults which had an impact on the level of DBS certificate that is available for some local authority roles, which may include some Councillors.

6.3 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.

6.4 If the above conditions above are met, then a Councillor can be eligible for an enhanced DBS certificate without a check of the barred list.

7) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

There are no environmental related issues.

8) Equality Considerations

There are no equality related issues.

9) Risk Management Considerations

No risks have been identified.

10) Summary / Conclusions / Reasons for Recommendations

The proposed recommendation ensures that the Council's DBS procedures are brought in line with the recommendations of the Bailey Report, thereby strengthening current processes.

Name

Director of Legal and Democratic Services – Maria Price

Cabinet Member

Councillor Saywell – Cabinet Member for Organisational Development, Workforce & Digital Transformation

Electoral Divisions: All

Local Government Act 1972: List of background papers - NIL

Contact for enquiries: Karen Strahan; 01392 382264, G31, County Hall, Exeter, EX2 4QD.