

COUNCIL

8 July 2019

CRIMINAL RECORD CHECKS FOR MEMBERS

Report of the Strategic Director for People

Strategic Aim:	Creating a Safer Community for All	
Exempt Information	No	
Cabinet Member(s) Responsible:	Cllr Alan Walters Cllr David Wilby	
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Ward Councillors		

DECISION RECOMMENDATIONS

That Council:

1. Notes the purpose and type of Criminal Record Checks through the Disclosure and Barring Service (DBS).
2. Approves the proposal to carry out DBS Checks for Members undertaking specific roles - as outlined in paragraph 4.5.
3. Adopts the policy for managing positive disclosures as outlined in Appendix A.
4. Authorises the Head of Human Resources to work with Members to carry out the DBS checking process.

1 PURPOSE OF THE REPORT

- 1.1 To advise Members of the DBS role in carrying out criminal record checks and how this aligns with the Council's Safeguarding policies and practices.

To consider a proposal to undertake DBS checks for Members who hold specific roles and offices within the Council as outlined in para 4.5.

2 OUR SAFEGUARDING ACCOUNTABILITY

- 2.1 The Council is committed to and has a statutory and moral duty to ensure the safety and welfare of children, young people and adults in the community. It also has a responsibility to ensure high standards of behaviour by its Members. Members will be provided with appropriate training in safeguarding and safe working practices (scheduled for 11 July 2019).
- 2.2 Rutland Council has a responsibility for, and is committed to, safeguarding and promoting the welfare of Children, Young People and Adults in need of safeguarding and for ensuring they are protected from harm. The purpose of undertaking a criminal record check is to establish whether a Member has any criminal convictions, cautions, reprimands, warnings or other relevant information in relation to which the Council should be taking appropriate steps in line with its safeguarding responsibilities.

3 TYPES OF CRIMINAL RECORD CHECKS

- 3.1 There are 3 levels of checks

Basic	A Basic check is for any purpose, including employment. The certificate will contain details of convictions and conditional cautions that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974.
Standard	This certificate will contain details of both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering.
Enhanced	<p>An enhanced DBS check is suitable for people working with children or adults in certain circumstances such as those in receipt of healthcare or personal care. An enhanced check is also suitable for a number of other roles which are specifically identified by the DBS, such as Taxi Licence operators or people working in the Gambling Commission.</p> <p>If the role is eligible, an employer can also request that one or both of the DBS Barred Lists are checked – Adults or Children. There is a statutory definition of 'regulated activity' that enables a check against the barred list</p> <p>Note 'Barred lists' are maintained by the DBS on individuals who are barred from working with vulnerable adults or children. They will have been placed on the barred list by the DBS as a result of a referral regarding inappropriate conduct or behaviour that has been 'found'.</p>

- 3.2 The DBS process is intended to offer safeguards in relation to individuals who

come into contact with young or vulnerable people as part of their 'usual' role. It is expected that such contact will be 'regular' rather than occasional and that it would be unsupervised.

- 3.3 The Council is legally responsible for ensuring individuals are entitled to submit an application for a DBS check. For employees, we undertake an assessment of the role against the DBS regulations and criteria to determine the level of check required for the role.

4 DBS CHECKS FOR MEMBERS

- 4.1 There are no specific and direct 'rulings' or guidance from the Home Office as to the eligibility for Members to a DBS check. Policy and practice in other authorities is varied – decisions and approaches are taken locally with due regard to (a) the eligibility criteria and regulations of the DBS and (b) local working arrangements pertinent to the authority. Research identifies that some authorities undertake no DBS checks for Members, some for specific roles and some for all Members.
- 4.2 Members do not carry out any of the roles specified in the above regulations (eg. care worker or social worker), although there are certain aspects of some Member roles which may cross into the field of activity which may be considered relevant. The role of Members means they are engaged in a variety of functions within the community and have access to children, young people and vulnerable adults. In addition, Members have a role to play as a Corporate Parent and community champion, collectively and individually. Access to sensitive data is not, of itself, criteria for a DBS check.
- 4.3 Members would therefore only be subject to a vetting check if they are carrying out a role or responsibility which requires them to work with children and/or vulnerable adults. Or they have the opportunity for regular unsupervised contact with children or vulnerable adults in specific settings, ie. schools, children's centres, children's homes or residential homes etc.
- 4.4 The Council will not accept a DBS disclosure certificate that has been provided by another organisation. However, we are able to accept confirmation of a DBS check that has been processed through the DBS Update Service which provides for portability of disclosures.

4.5 Proposal for Member DBS Checks

- 4.5.1 The following proposal has been based on:
- The scale and breadth of specific Member roles in Rutland
 - The level of involvement in discharging education and social care functions
 - Member's responsibilities in relation to Corporate Parenting
 - Proportionality to the risk and reassurance to the public.

4.5.2 **Portfolio Holder for Lifelong Learning, Early Years, Special Educational Needs and Disabilities, Inclusion and Safeguarding – Children and Young People**

Proposed Check – Enhanced with check against the Children Barred List

Rationale: Responsible for strategic decision making which impacts directly on services for children. Meets young people in a variety of forums.

4.5.3 **Portfolio Holder for Safeguarding – Adults, Public Health, Health Commissioning, Community Safety and Road Safety**

Proposed Check – Enhanced with check against the Adults Barred List

Rationale: Responsible for strategic decision making with impacts directly on services for vulnerable adults. At times will have access to vulnerable adults.

4.5.4 **Corporate Parenting Board**

Proposed Check – Enhanced with check against the Childrens Barred List

Rationale: Shared responsibility with officers for the safety, development and wellbeing of Rutland children and young people in care. Responsible for leading on the Corporate Parenting duty on behalf of all elected Members and provide challenge and advice to relevant Cabinet Members on the discharge of their responsibilities. Meet young people in a variety of forum.

4.5.5 **Fostering and Adoption Panels**

Proposed Check – Enhanced DBS check

Rationale - Attend Panel meetings and have access to highly sensitive information relating to individuals. In line with Ofsted guidance.

4.5.6 **All other Members**

It is proposed that the Council does not undertake DBS Checks on all other Members of the Council on the following basis:

- The criteria as specified in the regulations is not met
- Any risk can be covered by safeguarding training and guidance, eg. how to manage surgeries and protect Members (such as false allegations), and the community
- Members who do not carry out any of the specific roles identified above but who attend community events, take surgeries or visit local residents in their own home where they have access to the general public including children, do not meet the legislative criteria for an Enhanced or Standard DBS check.
- It would be unlawful for the Council to undertake an Enhanced or Standard DBS check on any other Member (or employee) where their role does not meet the statutory definitions and criteria.

4.5.7 There is no eligibility requirement for a **Basic** level check. Whilst the Council has assessed that this is not an essential requirement for all Members, an individual is able to apply for a Basic check themselves through <https://www.gov.uk/request->

copy-criminal-record. Costs are £25 per check. The procedures regarding any positive disclosure will be relevant as outlined in Appendix A.

- 4.6 A refusal by a Member to undertake a criminal record check (as outlined in paragraphs 4.5.2 to 4.5.5) will be referred to the Chief Executive and the Monitoring Officer as there will be a lack of assurance as to the Member's previous conduct, including whether there are any safeguarding issues.

5 MANAGING DISCLOSURE RESULTS

- 5.1 A '**clear**' disclosure certificate is one where there is no record of any relevant information.
- 5.2 A '**positive**' disclosure certificate is one which contains content about cautions, convictions, reprimands, warnings or information held locally by police forces relating to the Member and the activities they will or may be or may have been involved in whether as a private individual or a Member.

Appendix A outlines the procedure to be followed in the event that a positive disclosure is received.

6 CONSULTATION

- 6.1 We have consulted with members of Cabinet who were supportive.

7 ALTERNATIVE OPTIONS

- 7.1 Members could consider a lower level of DBS check. The proposal in paragraph 4 reflects the highest level of check that we consider meets the DBS regulations and eligibility criteria.
- 7.2 Members could also consider that the Council does not carry out any DBS checks on its Elected Members. This may however present some risks to the Council and challenge on our safeguarding responsibilities for those Members who sit on committees or boards that have an education or social care function.

8 FINANCIAL IMPLICATIONS

- 8.1 Costs of DBS Checks are £44 for an Enhanced DBS Check and £26 for a Standard DBS check. Based on the proposal in Paragraph 4, the cost would be $£44 \times 3 = £132$.
- 8.2 Individuals are subsequently able to join the DBS Update service – costs are £13 per year.
- 8.3 The Council's policy is to undertake renewals of DBS checks every 3 years.
- 8.4 Budget is available to meet the above costs of DBS checks.

9 LEGAL AND GOVERNANCE CONSIDERATIONS

- 9.1 The Council is required to ensure that it has proper safeguarding processes in place.
- 9.2 Relevant legislation with regard to criminal record checks are the Rehabilitation of

Offenders Act 1974 (Exceptions) Order 1975, the Police Act 1997, and Safeguarding Vulnerable Groups Act 2006.

- 9.3 Under Section 80(1)(d) of the Local Government Act 1972, persons standing for election are required to declare relevant convictions prior to election.

10 DATA PROTECTION IMPLICATIONS

- 10.1 A Data Protection Impact Assessments (DPIA) has been completed. No adverse or other significant risks/issues were found. A copy of the DPIA can be obtained from Carol Snell, Head of HR.
- 10.2 The only potential risk identified was that the disclosure of personal information through the checks may discourage people from standing for office as a Councillor. This is considered unlikely but should it occur, it is considered that the interference is a proportionate means of achieving the aim of safeguarding people with whom those subject to such checks may come into contact with.
- 10.3 The Council fully complies with the DBS Code of Practice which specifically refers to the storage and handling of data and to be compliant with the Data Protection Act, Human Rights Act and General Data Protection Regulations.

11 EQUALITY IMPACT ASSESSMENT

- 11.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found. A copy of the EqIA can be obtained from Carol Snell, Head of Human Resources.

12 COMMUNITY SAFETY IMPLICATIONS

- 12.1 There may be public interest in the Council giving assurance to vulnerable people and to society at large that Elected Members in a position of trust have undergone a level of vetting and scrutiny as to their sustainability to discharge specific aspects of public services.

13 HEALTH AND WELLBEING IMPLICATIONS

- 13.1 There are no health and wellbeing implications.

14 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 14.1 The Council has no higher duty than the protection of vulnerable people to whom it owes a statutory duty of care and DBS checks could provide a first level assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.
- 14.2 The risk to the Council's reputation may also be a factor – in terms of whether a Council would be perceived as failing to protect vulnerable persons by choosing not to adopt a system of DBS checks for Members in specific roles.

15 BACKGROUND PAPERS

15.1 No additional background papers.

16 APPENDICES

16.1 Appendix A – Members – Guidance for managing positive DBS disclosures.

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

Appendix A. Managing Positive Disclosures

ELECTED MEMBERS - GUIDANCE FOR MANAGING POSITIVE DBS DISCLOSURES

1. Introduction

The following guidelines outline the Council's procedure for managing a positive DBS disclosure for an Elected Member. They apply to all Members for whom a DBS Check is considered an essential requirement and supports the protection of children and adults to whom the Council provides a service.

The existence of a criminal record does not automatically debar an individual from their role of Elected Member of the Council. Rutland Council will make a fair and objective judgement to assess the risk and to evaluate all offences/convictions that:

- (a) Come to light as a result of a disclosure check and
- (b) Occur or come to light during an individual's tenure as an Elected Member of Rutland Council.

2. Disclosure information

The Council undertakes DBS Checks on Members on the following basis:

ENHANCED WITH CHECK AGAINST THE CHILDRENS BARRED LIST
Portfolio Holder for Lifelong Learning, Early Years, Special Educational Needs and Disabilities, Inclusion and Safeguarding – Children and Young People
Corporate Parenting Board

ENHANCED WITH CHECK AGAINST THE ADULTS BARRED LIST
Portfolio Holder for Safeguarding – Adults, Public Health, Health Commissioning, Community Safety and Road Safety

ENHANCED DBS CHECK
Fostering and Adoption Panels

As with employees, they will be undertaken on a 3-yearly re-check basis.

A computer record that the disclosure has been completed will be retained, but no information on convictions will be held in any other format.

3. Assessing a positive disclosure

The Council's primary responsibility in relation to any safeguarding issues is to ensure that all appropriate action is taken to mitigate or prevent risks to children, young people and adults. Whenever there are safeguarding concerns, all appropriate safeguarding measures must be followed through.

For the purposes of this procedure, a positive disclosure includes those matters formally identified by way of a positive criminal records check and any matters that are brought to the attention of the Chief Executive or Monitoring Officer (or the appropriate officers in their absence) which would ordinarily be identified by a criminal records check. This will include 'live' issues such as where a Member has been charged with or convicted of a criminal offence.

Any refusal by a Member to co-operate with the obtaining of a criminal records check will be addressed within this procedure.

Each case will be considered on its own merits against the guidelines below.

Procedure:

1. The Head of Human Resources will notify the Chief Executive and the Monitoring Officer of the positive disclosure and provide them with relevant information from the disclosure certificate as soon as practically possible.

2. The Chief Executive and Monitoring Officer will consider what action needs to be taken. Such considerations may include (but not necessarily limited to):

- How the procedure may integrate with the Local Authority Designated Officer (LADO) process (if appropriate) and whether the LADO or their representative should be part of the considerations.
- Whether there is a need for further input eg. from the Strategic Director of People, Leader or Deputy Leader.
- Whether a positive criminal record disclosure risk assessment is required. If so, this will be undertaken by the Chief Executive and Monitoring Officer with support from the Safeguarding teams if necessary. The Monitoring Officer will complete the risk assessment pro forma to ensure the outcome is properly recorded.

3. In assessing the information, the Chief Executive and Monitoring Officer will take into account:

- The frequency of the offence(s). As a general rule, a pattern of unrelated or similar offences over a period of time will be considered more serious than an isolated minor conviction.
- The nature and circumstances of the offence(s). The type of caution, reprimand or sentence will often indicate the serious nature of the crime. An offence committed against another person will always be considered by the Council to be of a serious nature in the context of working with children, young people and adults.
- When the offence(s) occurred. Offences that took place many years ago may have less relevance than recent offences.
- Whether the individual declared the offence(s)/convictions(s). A matching of information will, in the first instance, show honesty and openness. Failure to disclose should be discussed with the Member – it is possible that an individual considered that a minor offence committed many years ago, would not be disclosed. However, an individual should be aware that more serious offences will be disclosed and therefore failure to divulge could be a concern.
- Any mitigating circumstances. The individual may provide information that enables the context to be considered. Particular circumstances, that no longer apply, may have influenced the offence(s) at a particular time.

4. As the consequences could be far reaching, information will be kept strictly confidential and will only be disclosed on a need to know basis.
5. No action will be taken or any information shared that might compromise compliance with the Council's safeguarding responsibilities. In most cases, it is likely that the Chief Executive will consult the Leader in view of their respective roles and responsibilities.
6. The Chief Executive and Monitoring officer will communicate fully and regularly and take such advice and action and involve such persons as are necessary to ensure that the Council's interests are protected and the issues are addressed.
7. External advice will be taken as and when required.

ELECTED MEMBERS – POSITIVE DBS DISCLOSURE RISK ASSESSMENT

ELECTED MEMBER	
DATE COMPLETED	

Please provide a summary against each factor

1	What is the nature and circumstances of the offence(s)? Have any offences been committed against another person?
2	Relevance of the offence or incident to the Member engaging with vulnerable groups, staff, Members and customers.
3	How frequent were the offences – how many and over what period of time? <i>(comment regarding serious nature of offence(s))</i>
4	Context of the offence or incident and any information provided by the Member to explain the circumstances
5	Governance issues which the positive disclosure gives rise to and how they can be lawfully and practically addressed
6	Did the individual declare the offence(s)/convictions(s) on their DBS Application? If not, why not? Does the information match?
7	Are there any other mitigating circumstances?

Summary – next steps :

Should there be a referral to the Police or Disclosure and Barring Service?

Communication Strategy

Immediate response/restricting access to others, buildings, resources

Notification to the Chairman, Leader and Deputy Leader, Committee Chair

Notification and further assessment by the Standards Committee?

APPROVED BY:

Chief Executive

Monitoring Officer

DATE