

# Report to Ethical Standards and Member Development Committee

**22 March 2022**

<b>Subject:</b>	DBS Checks for Elected Members
<b>Director:</b>	Surjit Tour - Director of Law and Governance and Monitoring Officer
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## 1 Recommendations

- 1.1 That Committee consider the DBS Protocol and, subject to approval, recommend to Council:-

That Council approve the DBS protocol and proposal to undertake annual Enhanced DBS checks for the following member roles and positions:-

- The Leader
- Deputy Leader
- Cabinet Members for Children and Adults
- All Members of Children's Services and Education Scrutiny Board and Health and Adults Social Care Scrutiny Board
- Members of the Corporate Parenting Board
- Members of the Health and Wellbeing Board, and
- Any other Member who may regularly come into contact with children or vulnerable adults as part of their Council role.



## 2 Reasons for Recommendations







- 2.1 The Council is under a statutory duty to promote and maintain high standards of conduct, as set out in the Localism Act 2011. The introduction of DBS checks for members was raised as part of the consideration of this duty at the Member Engagement sessions held in December 2020.

One of the recommendations was that further consideration be given to the benefits of DBS checks and whether they should be introduced at this Council.

The matter was reported to the Ethical Standards Working Group at its meeting on 5 October 2021, with a full report due to be submitted to the Committee. In the meantime there has also been a motion submitted to Full Council at its meeting on 7 December 2021 proposing that all elected members should be vetted. There was considerable debate in the Chamber and the approved motion welcomed the decision of the Council's standards committee to include the consideration of enhanced DBS checks for elected members in their work programme.

At its meeting on 22 February 2022, the Ethical Standards and Member Development Committee gave approval to recommend to Council that members in the roles set out in recommendation 1.1 be subject to annual DBS checks. The matter was referred to the Ethical Standards Working Group to prepare a DBS protocol which is now attached at Appendix 1 for consideration.

## 3 How does this deliver objectives of the Corporate Plan?

		Maintaining high standards in public officer is important in providing assurance to the Council and the public that standards matters are being dealt with effectively, fairly and proportionately.
		
		



## 4 Context and Key Issues

- 4.1 In December 2020, a series of Member Engagement sessions took place. Feedback from the sessions was considered at Committee on 12 March 2021. One of the issues highlighted at the sessions was whether Members should be asked to consent to DBS checks.
- 4.2 Prior to 2012, Local Authorities routinely carried out Criminal Record Bureau (CRB) checks on Elected members. However, the Protection of Freedoms Act 2012 created the Disclosure and Barring Service and a new system of checks. This included a more restrictive set of criteria to determine when checks could be carried out and on whom. Since 2012, the issue of DBS checking for Councillors has become a policy matter for individual Councils.

### Level of DBS Check

- 4.3 Standard and Enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates). These laws only provide eligibility for DBS checks, they do not make them a requirement.
- 4.4 Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make. If the Council are considering asking a person to apply for either a standard or enhanced DBS check, as the employer, the Council are legally responsible for making sure the job role is eligible. The job roles of Councillors do not meet the requirements for a standards DBS check.
- 4.5 There is currently no legal basis on which the Council can currently require or seek Enhanced DBS Checks for all Elected Members. The role does not constitute a 'named position' eligible for checks, and Ward Councillors do not carry out 'regulated activity' as defined by the Freedom of Information Act 2012.



- 4.6 The Council is of course aware that some Elected Members may have had DBS checks, albeit in another capacity, for example if they are School Governor etc. Elected Members who do not carry out any of the specific educational and/or social service functions 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, as outlined above. However, a Basic Check could still be requested.
- 4.7 The legislative framework allows discretion on the issue of Basic checks. As such all elected members could agree to undergo a Basic DBS check. Basic checks show “Unspent Convictions & Cautions” from the Police National Computer (PNC) only, (*those that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974*). These checks do not show spent convictions, cautions, warnings, reprimands, other relevant police information, or children or adults barred list and are therefore are often considered of more limited value.
- 4.8 An enhanced check provides full details of a criminal record. This includes cautions, warnings, reprimands, spent and unspent convictions. It can also search the children and vulnerable adults 'barred list' to see if the applicant is prohibited from working with these groups. An individual can not request one themselves only the employer/organisation can request one.
- 4.9 With regard to Enhanced checks, for specific roles with more regular contact with children and vulnerable people, there is no statutory requirement on Councillors to undergo these checks. The eligibility criteria for an enhanced check is defined separately for contact with adults and Children. For children 3 criteria must be met, 1. the Establishment your in should be a specialist environments that involves working alongside children (e.g. schools, academies, colleges, residential children’s care homes etc), 2. The activity should be a regulated one i.e working with children and 3. The activity is either 4 or more times within a 30-day period, or once or more times a week. Examples of regulated activities for Adults are provided in the table below:



<b>Regulated Activity</b>	<b>Definition</b>
<b>Healthcare</b>	Provided by any healthcare professional or under the direction or supervision of one
<b>Personal care</b>	Washing, dressing, eating, drinking and toileting
<b>Social work</b>	In relation to adults, who are clients or potential clients, includes assessing or reviewing the need for health or social care services and providing ongoing support to clients
<b>Assistance with household affairs</b>	Anyone who provides day to day assistance to an adult because of their age, illness or disability, where it includes managing the person's money, paying the person's bills, or shopping on their behalf
<b>Assistance with the conduct of affairs</b>	Power of attorney/deputies appointed under the Mental Capacity Act
<b>Conveying an Adult</b>	For health, personal or social care requirements due to age, illness or disability. This includes hospital porters, patient transport services, driver's assistants, Ambulance Technicians and Emergency Care Assistants. Please note transporting/conveying is not necessarily in a vehicle and could be in a wheelchair/stretchers

4.10 It is unlikely that the identified roles such as Leader will meet the criteria to be eligible for an enhanced DBS Check but each role would require individual analysis on the circumstances.

### **Costs of DBS checks**

4.11 There is a cost involved in carrying out DBS checks. This is £40 for Enhanced checks. There is currently no allocated Council Budget. The Working Group recommends that the checks be undertaken on an annual basis.



4.12 Based on the suggested list of members, the annual cost for Enhanced DBS Checks would be approximately £1280 (this could fluctuate depending on membership of bodies/multiple roles). Should there be any changes to appointments during the municipal year, additional DBS checks would need to be undertaken (£40 per enhanced check).

## 5 Alternative Options

- 5.1 There is no legal obligation to obtain DBS checks for elected members the status quo could be maintained.
- 5.2 Standard and Enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates).
- 5.3 Enhanced checks could be completed only for those specific posts which meet the eligibility criteria. It is likely that very few of any of the selected posts will meet the eligibility criteria.



## 6 Benchmarking

### Colchester Borough Council

- 6.1 At the request of their Governance and Audit Committee, Colchester Borough Council were asked to consider whether the Council should implement Disclosure and Barring Service checks for Elected Members. Their investigation into the matter included obtaining information on the approach of neighbouring, second tier local authorities, towards DBS checks (*both in October 2017 and February 2018*), to which they report, all eight responses confirmed that no checks (*including Basic Level checks*) are carried out by neighbouring authorities.

### Harlow Council

- 6.2 A similar exercise was undertaken by Harlow in 2019, they report that the following Council's; *Dacorum, Maldon, Castlepoint, East Herts, Colchester, Brentwood, Basildon, Welling & Hatfield, Chelmsford, Braintree, Stevenage, Uttlesford and Epping Forest*, responded to confirm that they do not carry out DBS checks on Councillors. Following their research, Harlow is not proposing to start carrying out DBS checks on Elected Members.

### Knowsley Council

- 6.3 In Knowsley, all councillors who carry out prescribed functions are DBS checked. In 2019 they were subject to a comprehensive check by DBS in relation the administration and appropriateness of DBS checks within the organisation. It was concluded that DBS checks undertaken were appropriate and no safeguarding risks were identified.

<b>Resources:</b>	There is a cost for carrying out the checks. Enhanced checks cost £40 and the annual cost for the positions identified would be approximately £1280 (this could fluctuate depending on membership of bodies/multiple roles). The figure would increase should there be any further in-year revisions to appointments. Should it be determined that the Council should fund the checks a budget will be required to fund them.
<b>Legal and Governance:</b>	The Council would work within the terms of the Government's DBS Eligibility Guidance
<b>Risk:</b>	Carrying out the checks would help mitigate risks in relation to Member convictions



<b>Equality:</b>	All Members would be treated in the same manner regardless of any protected characteristics.
<b>Health and Wellbeing:</b>	There are no direct health and wellbeing implications arising from this report.
<b>Social Value</b>	There are no direct social value implications arising from this report.

## 7. Appendices

None

## 8. Background Papers

<https://www.gov.uk/government/collections/dbs-eligibility-guidance>

<https://www.gov.uk/government/publications/dbs-workforce-guidance>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/804668/Child\\_workforce\\_guide\\_v10\\_0\\_28052019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804668/Child_workforce_guide_v10_0_28052019.pdf)

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/735504/Adult\\_workforce\\_guide\\_v10\\_0\\_030818.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735504/Adult_workforce_guide_v10_0_030818.pdf)

<https://www.gov.uk/government/publications/new-disclosure-and-barring-services>

<https://www.knowsleynews.co.uk/dbs-checks-for-councillors-the-facts/>

<https://www.gov.uk/government/publications/dbs-code-of-practice>

