

Report of the City Solicitor

Report to Member Management Committee

Date: 27th March 2018

Subject: DBS Checks for Members

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. Key legislative changes were made to vetting and barring checks and Criminal Records Bureau (CRB) checks carried out by employers (via the Protection of Freedom Act 2012) and replacing them with Disclosure and Barring Checks via the Disclosure & Barring Service (DBS). The Protection of Freedom Act 2012 limited the circumstances in which DBS checks could be lawfully carried out.
2. Members are currently asked for a DBS check on 1st election, and every subsequent election thereafter. The level of check carried out for all Members is an enhanced check (without the barred lists).

Recommendations

The Member Management Committee is asked to:

- Note the contents of this report
- Consider the matter for determination

1. Purpose of this report

- 1.1 This report outlines the current procedure for requesting DBS checks for Members and highlights:
- the key legislative changes that were made to vetting and barring checks and Criminal Records Bureau (CRB) checks carried out by employers (via the Protection of Freedom Act 2012)
 - clarification provided by the Disclosure and Barring Service as to the defined reasons that Councils can undertake checks for Members
- 1.2 The report seeks guidance from the Member Management Committee in determining the most appropriate way forward with requesting DBS checks for Members.

2. Background information

- 2.1 Key legislative changes were made to vetting and barring checks and Criminal Records Bureau (CRB) checks carried out by employers (via the Protection of Freedom Act 2012) and replacing them with Disclosure and Barring Checks. The Protection of Freedom Act 2012 limited the circumstances in which DBS checks could be lawfully carried out.
- 2.1.1 The definition of who could be legitimately referred for a check was changed to remove controlled activity. This applied mainly to employees in administrative or support roles who had access to data, records or financial information about children or vulnerable adults. DBS checks can no longer be requested for these types of activity.
- 2.1.2 A new definition for “regulated activity” was introduced which tightened the scope of referral mainly around contact time with children: frequency of once a week or more often, or on 4 or more days in a 30 day period. This change meant some roles no longer met the new definition e.g. electricians/maintenance in Schools as contact time did not meet the frequency level required.
- 2.1.3 It is a criminal offence to process DBS checks unlawfully (that is, outside of the specific definitions provided).
- 2.2 At the meeting of Corporate Governance & Audit held on 22nd September 2017, the matter of DBS checks for Members was discussed.
- 2.2.1 The Committee was informed at that time that, of the 99 Council Members, 70 had a current DBS check, 19 had checks which were in excess of 4 years old and no records could be located for 10 Members.
- 2.2.2 In the discussion that followed it was the view of the Committee that all Members be reminded of the necessity to have in place a current DBS check and that failure to comply with this requirement should be the subject of consideration and sanction by the appropriate political Group Whip.
- 2.2.3 The Chair also suggested that the issue of DBS checks be referred to the Member Management Committee for further analysis. The Committee supported this and asked that specific consideration be given by Member Management Committee of whether a recommendation might be appropriate to Group Whips for a failure to complete a DBS check to be dealt with by political groups through their disciplinary arrangements with an ultimate sanction including removal of the group whip.

- 2.3 It has been established that a number of other Local Authorities deal with DBS checks in different ways. For example, Bradford Metropolitan Borough Council carries out DBS enhanced checks for those Councillors who deal with services that involve children and young people and/or vulnerable people only. York City Council carries out DBS enhanced checks on the Executive Members responsible for Adults and Children's Services. By contrast, Durham County Council has, since May 2017, required all elected members to be subject to a DBS check to provide reassurance in relation to Child Sexual Exploitation matters.
- 2.4 In September 2017 the Department for Communities and Local Government issued a consultation paper which set out the government's proposals for updating the criteria for disqualifying individuals from standing for, or holding office as, a local authority member, directly elected mayor or member of the London assembly. Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, the Greater London Authority Act 1999. The proposed changes would not act retrospectively.
- 2.4.1 The consultation began on Monday 18 September 2017. It ran for 12 weeks and closed on 8 December 2017.
- 2.4.2 It has been established that responses to the consultation by another local authority suggested that DBS checks should be made mandatory, even though this was not suggested in the consultation.
- 2.4.3 It has also been established that the Department for Communities and Local Government is very much aware of the DBS issues regarding checks for all elected members and there are discussions within the Department along these lines.
- 2.4.4 As yet there is no clear date for when the responses to the consultation will be published and any changes to the current DBS system would require a new policy and legislative process, which is currently dominated by Brexit.

3. Main issues

- 3.1 There is no mandatory requirement to have DBS renewals.
- 3.2 The Disclosure and Barring Service has provided clarification to the Council that BDS checks can be undertaken for Members for the following reasons:
- Lead Member in a designated area, e.g. Children's Services;
 - Member involvement in the Education and Social Services functions/leadership beyond that of the Lead Executive Member, involving nominated Deputies with designated portfolios in Children's and Adult Services;
 - The Council's scrutiny function involving a number of members and can examine, review and make proposals around any areas of Adult and Children's Social Care as well Education provision as well.
- 3.2.1 The Council also has devolved some powers to Area Committees upon which councillors serve in relation to some educational functions.
- 3.3 Whips are responsible for matters of discipline within their own Group.
- 3.3.1 Each Whip is informed of Members of their own Group who have not completed a current/valid DBS check.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 The Chief Whips has been consulted on the contents of this report.

4.2 Equality and diversity / cohesion and integration

4.2.1 There are no equality and diversity or cohesion and integration implications as a result of this report.

4.3 Council policies and best council plan

4.3.1 There is no impact on Council policies or the best council plan

4.4 Resources and value for money

4.4.1 An enhanced DBS check costs £44 and a standard check costs £26.

4.5 Legal implications, access to information, and call-in

4.5.1 The legal requirements are detailed within the body of this report.

4.6 Risk management

4.6.1 There is a risk of reputational harm if Elected Members chose not to undertake a DBS check.

4.6.2 There is a risk of lowering public confidence in Elected Members should they chose not undertake a DBS check.

5. Conclusions

5.1 Undertaking DBS checks for all Elected Members is a sensible and measured approach.

5.2 Whips are an integral part of the overall process in supporting Members to complete DBS checks within reasonable timescales.

6. Recommendations

6.1 Member Management Committee are asked to:

6.1.1 Note the contents of this report;

6.1.2 Agree the proposal that DBS checks are carried out for all Members

6.1.3 Agree that these checks continue to be carried out on 1st election, and then again at every subsequent election thereafter.

6.1.4 Agree that the level of check carried out for all Members continues to be an enhanced check (without the barred lists).

6.1.5 Consider whether it is appropriate to notify Group Whips of failure to complete DBS checks and ask them to deal with this through their disciplinary arrangements with an ultimate sanction including removal of the group whip.

7. Background documents¹

7.1 There are no background documents to this report

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.