



Report of the Chief Democratic Services Officer

Member Management Committee

Date: 13th April 2010

Subject: Safeguarding of Vulnerable People – Implications for Members – Update on Progress

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Previous Committee References:

Report to Member Management Committee 9th June 2005 “CRB Checks for Members”

Report to Member Management Committee 2nd June 2009 “Safeguarding of Vulnerable People – Implications for Members”

1.0 Purpose Of This Report

- 1.1 This report presents details the latest developments with regard to introducing arrangement to comply with the Safeguarding Vulnerable Groups Act 2006 (the Act) as it applies to Elected Members.
- 1.2 It is not necessary for any immediate action to be taken. However, given that the Act is to be introduced this year, and in the light of forthcoming elections which may give rise to questions regarding applicability to new Members, it is considered appropriate to provide Member Management Committee with an update.

2.0 Background Information

- 2.1 On 2nd March 2009, this Committee received a report which set out changes to legislation regarding the safeguarding of vulnerable people and the likely implications for the arrangements for carrying out Criminal Records Bureau (CRB) checks for Members.

2.2 At that time it was reported that

- Implementation of the Act 2006 had been put back from 2009 until an unspecified date in 2010
- The Act will establish two barred lists (one being a list of people barred from working with children and the other a list of people barred from working with vulnerable adults)
- The lists will be administered by an independent barring board – which would be known as the Independent Safeguarding Authority (ISA)
- The existing Criminal Records Bureau (CRB) will carry out ISA checks
- To undertake a regulated activity, a person must have an ISA check, have been initially vetted by the scheme and must continue to be a member of the scheme
- It will be an offence for a barred person to undertake a regulated activity for any length of time
- An employer taking on a person in a regulated activity will commit a criminal offence if they fail to check the status of an applicant, employee or volunteer
- It will be an offence for employers/providers to permit a barred person, or a person who has not yet had an ISA check, to work for any length of time (no matter how infrequent) in a regulated activity.

2.3 It was further reported that certain local authority members would be defined as undertaking regulated activities and initial legal advice was that the following Members would be included within the definition.

- Executive Board
- Adoption Panel
- Fostering Panel
- Corporate Carers' Group.

2.4 Members who are school governors will also need to be registered under the new Scheme.

2.5 Members on certain outside bodies will also be included within the new regime although, in these cases, it would be the responsibility of the bodies in question to ensure that a Member is appropriately registered.

2.6 It was further reported that it was likely to be considered unlawful to require participation by those not specifically included although it would be possible to continue with the current practice of voluntary participation for all Members should that be considered an appropriate approach.

- 2.7 Finally, it was reported that, in January 2009, the Government had concluded a consultation exercise regarding implementation of the new regime. The results of this consultation exercise had not yet been published although it was hoped that this would clarify details of how the scheme should be applied and, in particular, give further guidance as to the implementation timetable, how quickly checks must be carried out and who should be responsible for carrying out checks.
- 2.8 There may also be further guidance as to which Members should be considered to be carrying out a regulated activity.

3.0 Main Issues

- 3.1 It has now been confirmed that if Members (and staff) are newly appointed into Regulated Positions from November 2010 they will be required to be CRB checked and ISA registered.
- 3.2 It has also been confirmed that, from April 2011, existing Members (and, again, staff) are to be rechecked and registered as when their CRB checks come up for renewal although the ISA are currently indicating that there will be a five year lead in time.
- 3.3 It is therefore anticipated that the existing arrangements for CRB checks will remain in place for Members elected or re-elected in May 2010 and for any Members elected to the Council at a by-election held before November 2010.
- 3.4 At that point, those Members defined in paragraph 2.3 would be considered to be undertaking a regulated activity and would be required to be checked and to enter the scheme upon election or re-election to the authority or, if not already a member of the scheme, upon being appointed to one of the defined positions.
- 3.5 For all other Members it is assumed that the current policy will continue to apply i.e. that all Members will be asked to undertake a check upon election or re-election. In accordance with this policy, any new Members resulting from the May 2010 elections will be asked to complete a CRB check.
- 3.6 When Member Management Committee considered this matter in June 2009, officers were asked to review whether Scrutiny Board Members should be included within the list of Members considered to be undertaking a regulated activity. Legal advice has been sought on this point and this confirms that, based on current information, the list as originally proposed i.e. Scrutiny Board Members should not be considered to be undertaking a regulated activity.
- 3.7 To date the Government has not issued any response to the consultation exercise that it carried out in January 2009 and, hence, the matters detailed in paragraph 2.7 remain unresolved.
- 3.8 Members should be aware of the fact discussions are currently underway regarding the implementation of the Act in relation to Council employees and one point of consideration is whether the Council or the employee should be expected to pay for the initial cost of checking/joining the scheme (£36 for the CRB check and £28 for the registration).

- 3.9 Whilst it is acknowledged that different approaches may be under consideration for Council employees there is a distinct difference. Unlike Council employees, Members are not paid employees of the Council but, instead, receive an allowance which includes an element to cover all expenditure occurred. If Members were obliged to meet the expense of being within the scheme, then it would be necessary to adjust allowances accordingly. The net cost to the Council in would be the same although there would be additional hidden costs in additional administration.
- 3.10 Since this Committee last discussed this matter a number of Members have raised questions about the operation of the new arrangements and, particularly, whether they are likely to be more or less onerous to administer. Members might like to note, therefore, that implementation of the Act will bring with it a number of advantages.
- 3.11 Firstly it will bring clarity as to which Members should be subject to checking and, more particularly, to the consequences of these not being carried out. As Members will be aware, this has not been entirely clear in the past.
- 3.12 Secondly, it will bring clarity as to how information resulting from a check should be interpreted. Under existing arrangements, a check will produce information regarding any previous criminal record but it is then a matter for the Council to decide whether, as a result, a Member should or should not be prohibited from undertaking any particular role. Under the new arrangements, this decision will not be a matter for the Council but will be determined by the ISA.
- 3.13 It is worth noting, however, that whilst CRB checks are currently undertaken with a view to revealing convictions with a bearing on working with children or vulnerable adults, they could in theory bring to light an unrelated and recent custodial sentence which could mean that the Member might not be eligible to remain as a councillor. However, the ISA would not notify the Council of such convictions. There is some debate nationally as to whether it would be permissible to seek regularly updated CRB checks for people who are already ISA registered. However, whatever the outcome of this debate, it would not be intended to apply such an approach to Members where the sole purpose of carrying out any checking is to provide assurance with regard to contact with vulnerable people (and in a situation where Members, other than those in regulated positions, will not be obliged to submit themselves to any forms of checking).
- 3.14 Members might like to know that, since the current policy was introduced 2005, no concerns of any nature have been identified and it has never actually been necessary for the Council to make any difficult decisions of this nature.
- 3.15 Thirdly, the new system will be both more reliable and less onerous. The present system, rather like a vehicle MOT, requires checks to be carried out at periodic intervals but can only provide assurance at a point in time. Under the new arrangement, a Member will only need to be checked once and it will then become the responsibility of the ISA to notify the Council if and when a problem of suitability arises.
- 3.16 Finally, the current arrangements require organisations to carry out their own CRB checks. Hence a Member could, for example, have to undergo separate CRB checks to be a school governor, a Member of the Council and to sit on an outside body. Under the new arrangement, the Member will be checked and become a member of the scheme once after which continued membership of the new scheme will cover undertaking any regulated activity in any organisation.

4.0 Implications For Council Policy And Governance

4.1 There are clear governance implications in ensuring that Elected Members are appropriately cleared to undertake their full range of responsibilities.

5.0 Legal And Resource Implications

5.1 The legal implications of implementing the Act are as detailed in this report

5.2 It is proposed that the cost of undertaking voluntary checks of Members will continue be met by the Council as will the cost of joining, and retaining membership of, the scheme for those undertaking regulated activities.

5.3 The cost of checks and of membership of the scheme has been provided for within base budgets.

6.0 Conclusions

6.1 The Safeguarding Vulnerable Groups Act 2006 will come into effect in November 2010.

6.2 No action needs to be taken until then and, in particular, there will be no immediate implications for any new Members at the May 2010 elections who will be asked to complete CRB checks in accordance with the current established policy.

6.3 From November 2010 it will be a legal requirement that any Members newly appointed to any of the above be subject to an ISA check and to remain in membership of the scheme.

6.4 Members already in these roles will be required to be checked at such time as their existing CRB checks are due for renewal (i.e. when they are re-elected) and will then be required to remain in membership of the scheme.

6.5 It is anticipated that all other Members will continue to be asked to undergo checks in accordance with the existing policy.

6.6 It is also anticipated that the cost of CRB checks under the existing policy will continue to be borne by the Council, as will the additional costs of registration and scheme membership, for those Members carrying out regulated activities.

6.7 It remains to be clarified as to how soon checks must be completed in relation to a Member being appointed to a regulated activity and the consequent processes that will need to be established in Leeds in relation to what should follow in the event of a check not being completed in a timely manner. Once guidance on the matter has been received this will be the subject of a further report to this Committee, together with clarification of who will be statutorily responsible for ensuring that Members carrying out regulated activities have been registered with the ISA.

6.8 At that time also, an update will be provided as to any other matters upon which guidance has been received.

7.0 Recommendation

7.1 Members are asked to note the contents of this report.