



REPORT OF: DIRECTOR OF HR, LEGAL & GOVERNANCE

TO: STANDARDS COMMITTEE

ON: 14 JANUARY 2019

SUBJECT: Review of DBS Procedures - Councillors

1. PURPOSE OF THE REPORT

A review of the current arrangements for undertaking police record checks for Councillors.

2. RECOMMENDATIONS

The Standards Committee is asked:

To review the current guidance on Disclosure and Barring Service (DBS) eligibility for Councillors and make any recommendations for change to the full Council.

3. BACKGROUND

At their meeting in October 2018, the Committee re-considered the work programme following the publication of the outcome of national government consultation on 'Updating the Disqualification Criteria for Councillors and Mayors' and added to the programme a review of the Council's policy on the application of the Disclosure and Barring Service provisions for Councillors.

The government had consulted as reported in October on their proposals to update the disqualification criteria for councillors. Following the consultation the government announced that it is to strengthen rules preventing people found guilty of serious crimes from serving on local councils.

The arrangements for the undertaking of police checks are facilitated by the Disclosure and Barring Service (DBS).

The Council's current DBS Policy is attached as Appendix A to this report.

The ability for an employer, to ask an individual to apply for a DBS check, at either Standard or Enhanced level, is set out in legislation. There is a legislation that supports and prevents access to the DBS service depending on the role of an individual and the frequency and contact a person has with vulnerable people.

There are 3 levels of checks that can be undertaken:

- Basic disclosures are available to anyone for any purpose and are not job specific. They detail only unspent convictions in line with the Rehabilitation of Offenders Act.

- Standard level disclosures are exempt of the Rehabilitation of Offenders Act and are often used for regulated roles such as Financial Services or individual working within hospitals.
- Enhanced level disclosures are also exempt from the Rehabilitation of Offenders Act and are commonly used for individuals who care for children or vulnerable adults. An additional check to check with barred lists for children and/or adults

Organisations can undertake checks in accordance with certain eligibility criteria.

In summary these are set out below.

The DBS applicant must be deemed to be employed in 'regulated activity' to enable an employer to request an enhanced disclosure with an additional check of children and/or adults for an individual.

- For children – the person must have frequent and unsupervised access to children. The frequency is determined by unsupervised contact more than 4 times a month or one overnight stay.
- For vulnerable adults – the person must provide one of six activities to a vulnerable adult. There are no frequency rules. Please note deeming an individual as a vulnerable adult is also dictated by law, as this cannot be assumed by age or disability (ref The Safeguarding of Vulnerable Groups Act 2006, Chapter 47, section 59)

Standard level disclosures are exempt of the Rehabilitation of Offenders Act and are often used for regulated roles such as Financial Services or individual working within hospitals.

A great deal of media coverage exists whereby the public feel further checks should be undertaken. The legislation tries to create a fair process by striking a balance between transparency and unnecessary invasions of privacy, while protecting the most vulnerable in our society. Regardless, of any opinion on whether a check should or should not be undertaken, or whether the rules are a common sense approach to this issue, the law remains in place. Therefore, to undertake an enhanced level DBS check against an individual who does not meet the eligibility criteria is against the law and therefore cannot be actioned.

The Council's current practice involves risk-assessing specific Councillor roles where they may have access or personal data relating to children, or vulnerable adults, such as the Executive Member for Children, Young People & Education.

4. RATIONALE

The recent developments nationally have suggested that the Council's approach be reviewed.

The council must at all times ensure that any proposals it develops fit with the legislative guidance for the conducting of checks and provide for the Council an assurance that it is permitted to ask exempted questions.

5. POLICY IMPLICATIONS

The Government said: "Elected members play a crucial role in town halls across the country, and are the foundations of local democracy. They are community champions, and have a

leading role to play in building a better society for everyone. With such an important role comes great responsibility, and these changes will protect residents while upholding the values and high standards of behaviour we all expect.”

It is therefore appropriate (and in order to reflect the pending legislative changes) to review and update the Council’s processes and requirements for certain councillor roles to be subject to DBS checks.

Roles within the Council for employees that are eligible for a DBS are renewed every 3 years or the employee takes part in the update service which is paid yearly and the employee provides consent for Blackburn with Darwen BC to ‘check’ their record with the update service at the time the renewal is due.

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

Currently, the disqualification rules for councillors and mayors is contained in section 80, Local Government Act 1972, which includes a provision that anyone convicted of an offence carrying a prison sentence of more than three months (without the option of fine) is banned from serving as a local councillor.

The new measures will see the disqualification rules changed to include the alternatives to a prison sentence as a barrier to becoming a councillor. This would mean any person who is subject to an Anti-Social Behaviour Injunction, a Criminal Behaviour Order, a Sexual Risk Order or who is on the Sex Offenders’ Register, would no longer be able to stand or serve as a councillor. This will require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 2009.

Although the current disqualification rules do not provide for carrying out DBS checks, any changes to the Council’s requirements for carrying out DBS checks must be in accordance with the legislative framework and statutory guidance issued in respect of councillors.

8. RESOURCE IMPLICATIONS

None

9. EQUALITY IMPLICATIONS

Any proposals for change will be assessed to establish any potential equality implications. Any final proposals are subject to agreement of the full Council for which an equality impact assessment report will be prepared, as required.

10. CONSULTATIONS

The DBS will be consulted on final proposals to be presented as recommendations from this Committee to the full council

Contact Officer: Asad Laher/Corinne McMillan
Date: December 2018
Background Papers: DBS Regulations.