

**TITLE OF REPORT: ITEM REFERRED FROM OVERVIEW AND SCRUTINY COMMITTEE:  
22 SEPTEMBER 2015 – DISCLOSURE BARRING SERVICE CHECKS FOR  
COUNCILLORS**

*The following is an extract from the Draft Minutes of the Overview and Scrutiny Committee meeting held on 22 September 2015.*

**53. ANNUAL SAFEGUARDING PERFORMANCE UPDATE FOR APRIL 14 – MARCH 15 AND  
DBS CHECKS FOR COUNCILLORS**

The Active Communities Manager presented the report entitled Annual Safeguarding Performance Update for April 14 – March 15 and DBS Checks for Councillors.

She reminded members that the Council had a statutory duty to protect children and refer any concerns to the relevant agencies. There is also a duty to protect vulnerable adults, however concerns regarding vulnerable adults can only be referred with their consent unless the adult lacks the mental capacity to protect themselves.

In the last year NHDC had made 7 referrals regarding children at risk of harm, but it should be noted that homelessness is an automatic reason for referral and 3 referrals regarding vulnerable adults.

She drew attention to section 8.4 of the report which detailed progress and planned developments.

In respect of Disclosure Barring checks the Active Communities Manager advised that the Protection of Freedoms Act 2012 had changed the regime of vetting and barring individuals from working with children and vulnerable adults, which had significantly reduced the number of positions and circumstances in which persons would need a criminal records check.

There was no legal requirement for a Councillor to undergo such checks by virtue of their position of an Elected Member and advice from the Disclosure Barring Service was that Councillors undertaking their general constituency duties would not routinely require DBS checks.

She suggested that the Committee may wish to recommend basic DBS checks for all Councillors and, if their role involves regular and unsupervised contact with children and/or vulnerable adults, enhanced DBS checks for Executive Members and the Children's Champion.

Members were pleased that the Council's Safeguarding duties were being treated seriously. The discussion regarding who should be DBS checked and at what level was vigorous with Members having differing opinions and it was decided to vote for each option.

The vote for a standard DBS check for all Councillors was lost.

The vote for enhanced DBS checks for Executive Members and the Children's Champion was won.

**RESOLVED:**

- (1) That the annual report of progress made against the Council's fulfilment of the statutory duty to maintain an effective safeguarding function with regard to children be noted:

- (2) That the annual report of progress made against the Council's application of its safeguarding function with regard to vulnerable adults be noted;
- (3) That the processes in place at NHDC for application and review of safeguarding processes are sufficient and robust;
- (4) That the Head of Policy and Community Services be requested to provide an annual review of the Safeguarding processes.

**RECOMMENDED TO CABINET:** That, if their role involves regular and unsupervised contact with children and/or vulnerable adults, enhanced Disclosure Barring Checks be carried out on all Executive Members and the Children's Champion.

**REASON FOR DECISION:**

- (1) To ensure that the Overview and Scrutiny Committee is kept apprised of the safeguarding performance within NHDC;
- (2) To consider the best course of action in respect of Disclosure Barring Checks for Councillors.

***The following is the report considered by the Overview & Scrutiny Committee at its meeting held on 22 September 2015.***

**TITLE OF REPORT: ANNUAL SAFEGUARDING PERFORMANCE UPDATE FOR APRIL 14 – MARCH 15 AND DBS CHECKS FOR COUNCILLORS**

REPORT OF THE HEAD OF POLICY AND COMMUNITY SERVICES

EXECUTIVE MEMBERS: Councillor Bernard Lovewell (Adult Safeguarding) and Councillor Julian Cunningham (Children's Champion, and Safeguarding of Children).

**1. SUMMARY**

1.1 To provide an update to the Overview and Scrutiny Committee regarding current performance at NHDC relating to the safeguarding of children and vulnerable adults.

**2. RECOMMENDATIONS**

2.1 That the Overview and Scrutiny Committee receive and comment on the annual report of progress made against the Council's fulfilment of the statutory duty to maintain an effective safeguarding function with regard to children.

2.2 That the Overview and Scrutiny Committee receive and comment on the annual report of progress made against the Council's application of its safeguarding function with regard to vulnerable adults.

2.3 That the Overview and Scrutiny Committee agree that sufficient and robust processes are in place at NHDC for application and review of safeguarding processes, and that an annual review and presentation to this committee should continue.

2.4 That the Overview and Scrutiny Committee consider the advice provided in regard to Disclosure Barring Checks on elected members, and whether to recommend to Cabinet a policy for standard checks for all members, with enhanced checks for Executive Members and the Children's Champion.

**3. REASONS FOR RECOMMENDATIONS**

3.1 The recommendation(s) contained within paragraph 2.1, 2.2 and 2.3 are made due to this being the best course of action that can be accommodated within the approved budget and officer resources, that will fulfil our statutory and lawful obligations but also ensure that a regular, corporate review exists.

**4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 None applicable

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

5.1 None applicable

**6. FORWARD PLAN**

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan

## **7. BACKGROUND**

- 7.1 Section 11 of the Children Act 2004 places a duty on all statutory agencies working with children and young people to 'safeguard and promote their welfare'. The duty means that key people and bodies must make arrangements not only to ensure their functions are discharged with full regard to the needs to safeguard and promote the welfare of children but that services they contract out to others also have regard to that need.
- 7.2 "No Secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults" was issued in 2000 under Section 7 of the Local Authority Services Act 1970. Whilst it is not strictly enshrined in legislation, local authorities who do not follow the guidance would be seen to be acting unlawfully.
- 7.3 A duty has been placed on top tier and unitary local authorities to establish independent Local Safeguarding Boards for both children and adults. Locally, these are known as the Hertfordshire Safeguarding Children Board (HSCB) and the Hertfordshire Safeguarding Adults Board (HSAB). Responsibility for the development and maintenance of both boards rests with Hertfordshire County Council, although officers from Herts Districts and Boroughs are members of the Board..
- 7.4 Safeguarding adults differs from the safeguarding and protection of children in a number of ways, including by application of quite different legislation. A key difference is that while there is a legal expectation that children are protected from physical or psychological damage, adults with mental capacity have a right by virtue of being of the age of majority, to make their own choices, take risks, be free from coercion, and to be consulted and involved in their own safeguarding plans. Adults without mental capacity have relevant legal safeguards under the Mental Capacity Act 2005.

## **8. ISSUES**

- 8.1 Our statutory function remains that of referral of concerns to the relevant agency for necessary action; in making a formal referral, NHDC receive an acknowledgement that the matter is already under investigation, assigned to a work or on occasion we may be asked for any more information we may be able to provide. However, NHDC cannot be informed what the outcome or resolution may be for any victim, family, carer or alleged abuser; we can therefore only report rates of referrals, not rate of resolution.

### **8.2 Rates of referrals (children) April 2014 – March 2015**

- 8.2.1 Between April 2014 and March 2015 NHDC made seven referrals to Hertfordshire County Council regarding concerns that a child was at risk of significant harm.

Four of these related to children who were homeless. In most cases the children were referred by default because their primary caregiver was homeless.

The remaining three cases related to the primary carer being unable to provide sufficient care and to a child in a household where domestic abuse was taking place.

### **8.3 Rates of referrals (vulnerable adults) April 2014 – March 2015**

- 8.3.1 During the same period three referrals were made where concerns were noted about an adult. These cases related to suspected abuse from a carer, a family member and an adult lacking mental capacity to adequately care for them self.

- 8.3.2 Caution should be applied when comparing referral rates with previous years or within similar organisations. Many factors including heightened awareness amongst the public, high profile cases reported in the media etc, affect referral rates and increases or decreases in referrals made do not necessarily correlate with changing patterns of actual abuse. Under-reporting is still considered a significant problem, particularly affecting sexual abuse cases. District and Borough Councils across the country also differ significantly in the types of frontline services they provide, and thus the number of officers in direct contact with potential victims, and this influences the numbers of referrals made. For this reason we do not present these comparative statistics within this report.
- 8.3.3 More crucial is an assessment that NHDC demonstrates robust policies and procedures that are adhered to by all staff and regularly reviewed.

#### **8.4 Progress and planned developments**

- 8.4.1 A number of developments have taken place at NHDC in relation to safeguarding in the last twelve months;
- Level one Safeguarding Vulnerable Adults training was offered for the first time to staff in Autumn 2014 and attended by 35 staff.
  - Briefing notes for members on safeguarding were circulated during July – September 2014.
  - Staff trained as Designated Safeguarding Officers (DSO's) attended level two Safeguarding Vulnerable Adults training in Autumn 2014.
  - Owners of licensed premises, hotels and B&B's were offered the opportunity to attend CSE briefings provided by Hertfordshire Constabulary in June 2015.
  - In July 2015, Female Genital Mutilation (FGM) Protection Orders came into force with top tier local authorities able to make an application on behalf of a victim or potential victim.
  - The duty to have due regard to the need to prevent people from being drawn into terrorism commenced in July 2015; there is a degree of overlap in terms of duty to protect younger people in particular. A group of officers attended PREVENT training with Hertfordshire Constabulary and are currently developing a plan to show how best to roll this out to the organisation (officers and members) and embed the duty.
- 8.4.2 A number of developments are planned for the next twelve months;
- Following serious case reviews on Child Sexual Exploitation (CSE) in Oxfordshire and Rotherham, NHDC has organised a CSE briefing for all senior managers and Designated Safeguarding Officers in September 2015. Members were also invited to attend either of these sessions and information was included in the 28<sup>th</sup> August MIS.
  - CSE briefings for taxi drivers and licensees are organised for November 2015 at DCO.
  - Safeguarding Children refresher training at level one and level two will be rolled out across the organisation between January-March 2015.

## **8.5 Children Act 2004 Section 11 audit**

8.5.1 In May 2015 Hertfordshire County Council issued all statutory agencies with a self completion audit, designed to assess compliance of our statutory duty to safeguard children. Upon completion of the audit looking at 48 areas of competence, NHDC received a green RAG rating, indicating that our strategic and operational arrangements are in place, and the organisation is meeting standards of its statutory obligations under Section 11. We were able to provide evidence that in 45/48 areas we have outstanding practice.

8.5.2 Three areas for minor improvement were identified where current performance is deemed satisfactory:

- Improved case management in reference to children undergoing a common assessment framework (CAF); due to the limited regular contact opportunities between Council staff and children, there has yet to be an opportunity for an employee to act as lead professional on a CAF, or be involved in the CAF process. However it is recommended that written procedures are developed in the event that this occurs.
- Improved measures to ensure contractor compliance with safeguarding; monitoring of contractor compliance takes places in many areas e.g leisure. This could be further improved by enhancing the monitoring process in other areas such as grants (this will be built into the new grants policy currently under review) and maintaining a central log of all monitoring.
- Oral checking of references prior to the appointment of new staff; there is a suggestion in the audit that this is a recommendation for all posts. Further discussion with HSCB is needed to clarify whether there is a statutory requirement to do so and to benchmark our current practices against other statutory agencies.

8.5.3 Our current safeguarding action plan will be updated once feedback is received from HSCB about our audit submission. Progress against these actions will be reported to Overview and Scrutiny in next year's annual report.

## **8.6 DISCLOSURE AND BARRING SERVICE**

8.6.1 At the meeting of the Overview and Scrutiny Committee on 29<sup>th</sup> July 2014, in reference to safeguarding, the following discussion took place;

"Members discussed that both District and Parish Councillors came into contact with children and vulnerable adults whilst undertaking their constituency or civic duties and queried whether all Members of District and Parish Councils should have Disclosure and Barring Service Checks. They acknowledged that on many of these occasions they were accompanied by other adults, however there were times when this did not happen. They also recognised that there were costs associated with the checks and that there could be problems if the checks revealed negative information about a particular Councillor. They agreed that a briefing note considering the value and necessity of Disclosure and Barring Service Checks and possible associated costs would be useful."

Since the need to conduct Disclosure and Barring checks is so integral to the management of the Council's safeguarding function, it is important this form part of our annual review.

8.6.2 The Corporate Human Resources Manager manages the arrangements for all roles within the Authority for which a DBS check is required (be they employee or elected member) and the level which should be requested, Standard or Enhanced. The Disclosure Barring Check policy states that;

“Standard or Enhanced checks may be requested for those employees who are in regular contact with the under-18s, the elderly, with sick or disabled persons and involve administration of the law (e.g. licensing), handling commercially sensitive information, confidential information, and those dispensing legal guidance”

- 8.6.3 In the case of elected members, they will on occasion attend or visit homes where there may be young children or vulnerable adults present and thus it may be considered that even a standard level DBS is required. However, what the authority must consider is the minimal level of risk of a councillor being left in ‘sole charge’ i.e. caring or left in sole charge of an individual, versus the cost and administrative resource required to carry out checks for all councillors.
- 8.6.4 Officers were asked to consider whether a blanket approach, requiring all elected members to be subject to a basic DBS check, should be applied by NHDC. However, as with the application of such checks for officers, we need to be mindful not only of cost and resource implications but in regard to the rights of individuals for whom such checks are simply not deemed necessary.
- 8.6.5 The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This had the effect of significantly reducing the number of positions and circumstances in which persons would need to be the subject of a criminal records check, and under subsequent changes and legislation the DBS checks which replaced them.
- 8.6.6 Changes to the legislation now mean that there is no legal requirement for any councillor to undergo such checking by virtue only of their position as an elected member. Further, advice from the Disclosure Barring Service is that councillors undertaking their general constituency duties are not generally subject to, or routinely require, DBS checks.
- 8.6.7 The Safeguarding Vulnerable Groups Act 2006 effectively scaled back the number and type of positions/circumstances which should be subject to criminal records checking. The provisions now only relate to those persons who have close and unsupervised contact with vulnerable groups including children. There are specific definitions as to what this means in practice, as follows;

*With regard to children:*

Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children – if done regularly; and relevant personal care (even if only done once); registered child-minding and foster carers.

*With regard to adults:*

Healthcare professionals providing healthcare or personal care; the provision of social work by social care workers; assistance with cash, bills or shopping or the conduct of their personal affairs; conveying persons because of their age, illness or disability even if only done once.

- 8.6.8 Further, there has been a legal challenge in May 2015 where Cornwall Council sought to introduce enhanced DBS checks for all councillors, which found such an approach to be in breach of councillors’ Human Rights. They have since implemented a policy of basic checks for all Councillors with enhanced checks for those whose role requires regular unsupervised access to children, young people or adults in vulnerable circumstances or access to personal information of a sensitive nature e.g those members on adoption and fostering panels.

- 8.6.9 Given the risks, constraints and legal framework in which the Council must operate outlined above, plus annual elections which bring a small degree of change in the councillor establishment, officers would advise that the risks and potential resource implications of conducting blanket enhanced checks far outweigh any benefit which may be achieved. However, it may be that following discussion, members of the Overview and Scrutiny Committee recommend to Cabinet that it adopt a policy that all elected members be subject to basic level DBS checks, with checks at enhanced level applied only to Executive Members and the Children's Champion role.

## **9. LEGAL IMPLICATIONS**

- 9.1 The terms of reference for Overview and Scrutiny Committee include to "question...appropriate officers about service performance, whether generally or in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects".

- 9.2 The relevant legislation is the Children Act 2004, the key points of which are:-

- Section 11 places a statutory duty on key people and bodies – including district councils to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children.
- Section 10 outlines the duty to promote inter-agency cooperation between named agencies (including district councils).
- Section 13 gives district councils representation on, and participation in, Local Safeguarding Children's Boards (LSCBs).

- 9.3 The key responsibility for safeguarding in Hertfordshire lies with the County Council and it is important to remember that it is not the responsibility of any District Council Member, employee, volunteer or contracted service provider to determine whether abuse is being experienced, or has taken place, or indeed the nature of any abuse.

The role of the member, employee, volunteer or contracted service provider is to inform and report concerns, not to investigate or judge. A District Council is not responsible for investigating any safeguarding incidents or allegations, involving children, young people or vulnerable adults, but provides the local 'eyes and ears' to enable a route to report any concerns.

- 9.4 No Secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults 2000 was issued under Section 7 of the Local Authority Services Act 1970. Whilst it is not strictly enshrined in legislation, local authorities who do not follow the guidance would be seen to be acting unlawfully.

- 9.5 The Counter-Terrorism and Security Act 2015 contains a duty on specified authorities to have due regard to the need to prevent people from being drawn into terrorism. In March 2015, parliament approved guidance (issued under section 29 of the Act) for specified authorities, which they must have regard to when complying with the duty. The duty commenced on 1 July 2015 for authorities specified in Schedule 6 to the act, save in respect of any specified authority to which section 31 (freedom of expression in universities etc) is expressed to apply.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There are no additional financial implications for us to continue to meet our obligations. Ongoing training for staff will be funded from existing budgets. However it should be noted that their may be increased training needs for both staff and



members in response to the national agenda e.g Child Sexual Exploitation, Prevent, which may place additional pressure on learning and development budgets; however, in the case of Counter terrorism and PREVENT, the Home Office have recognised these additional obligations and confirmed a one off award of £10k to NHDC and similar authorities in order to meet the additional costs of training and raising awareness, including in the community.

- 10.2 The cost of a basic DBS check is £26. Good practice is to renew checks every three years. Costs for additional basic checks for all members would be approximately £1274, with enhanced checks costing £44 for Executive members and Childrens Champion (a member of the Executive) adding another £352, £1626 total per three yearly cycle. These figures do not include any additional administration costs.

## 11. RISK IMPLICATIONS

- 11.1 Progress on implementing and reviewing a Corporate Policy on Safeguarding Children and Safeguarding Adults at Risk of Harm is tracked on the risk register: RR278.
- 11.2 NHDC's safeguarding policies and procedures outline the various steps taken by North Herts District Council to reduce the risk to employees, children and vulnerable adults accessing our services, including procedures for safe recruitment, learning and development for employees and reporting procedures for employees with concerns.

## 12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 9.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 Due to their age, development and dependency on adults including in the delivery of services, children are vulnerable and therefore often more open to abuse. They have a legal right to be protected and for organisations to take appropriate action to prevent and report suspected abusive behaviour. The Equality Act supports the Children Act 2004 to provide this protection to vulnerable children.
- 12.4 Equally, adults who are more vulnerable, either through decreased mental capacity/age related dementia, learning difficulties, or their personal domestic situation i.e. changing from one residential care home to another, have a legal right to be protected and for organisations to take appropriate action to prevent and report suspected abusive behaviour.

## 13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 The HR role in safeguarding is in the main covered by processes contained in recruitment and the Disclosure Barring Service Policy and the links from that policy to other policies. The Disclosure Barring Service Policy has just been updated to reflect the changes brought in by the Protection of Freedoms Act 2012 amending the Safeguarding Vulnerable Groups Act 2000.

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## **16. BACKGROUND PAPERS**

- 16.1 None.