

	<p style="text-align: center;">AGENDA ITEM No.</p> <p style="text-align: center;">14</p>
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TITLE OF REPORT: DBS CHECKS FOR NHDC COUNCILLORS – POLICY POSITION

REPORT OF THE HEAD OF POLICY AND COMMUNITY SERVICES

1. SUMMARY

- 1.1 NHDC Overview and Scrutiny, at its meeting on 29th July, requested that DBS checks should be conducted on all NHDC councillors and it was agreed that a briefing note be returned to that committee outlining current practice and potential implications.
- 1.2 This report is therefore intended to outline the approach currently taken in regard to DBS checks on NHDC officers, both prior to and in service, as well as elected members. It also includes comparison with the approach taken by Herts County Council, as some NHDC members will be subject to application of their policy, as well as potential implications were the current system to be changed.

2. RECOMMENDATIONS

- 2.1 That the Committee note the current NHDC policy in regard to DBS checks on officers and elected members
- 2.2 That the Committee note the current Herts County Council policy in regard to DBS checks on members, and the rationale for that approach
- 2.3 That the Committee, following debate on this issue, agree to either
 - a) Agree that the policy for DBS checks for elected members be reviewed and any proposal for change reported back in the next annual review on Safeguarding to the Overview and Scrutiny Committee in mid 2015, or
 - b) Propose to Cabinet that the current policy is changed to ensure that all NHDC councillors are subject to a DBS check

3. REASONS FOR RECOMMENDATIONS

- 3.1 The current policy in regard to officers and members is aligned, in that it is proportionate to duties undertaken, exposure to risk of both vulnerable children/adults and to elected members and officers, and to the resources required to administer this process.
- 3.2 The approach taken by HCC reflects the higher exposure of its elected members to situations where DBS is more likely to be required, much of this down to having increased childrens' and adult care statutory responsibilities.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

5.1 This report was made at the request of a number of members of the Overview and Scrutiny Committee, but the report has also been discussed with the Leader of the Council and portfolio holders with responsibility for children and adults at risk of harm.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not therefore been included in the Forward Plan.

7. BACKGROUND

7.1 Reforms to CRB and Independent Safeguarding Authority

7.1.1 The Protection of Freedoms Act 2012 (“PFA”) introduced changes to the arrangements for carrying out criminal records checks. One of the key changes involved the merger of the Criminal Records Bureau (“CRB”) and the Independent Safeguarding Authority (“ISA”) in December 2012 to form a new body called the Disclosure and Barring Service (“DBS”). However, these changes are far more wide ranging than simply a change of terminology – a former CRB check is not the same as the present requirement for DBS, the significance of a DBS being higher to reflect necessary changes to protect vulnerable children and adults at risk of harm under ‘Safeguarding’ duties.

7.1.2 The DBS is a non-departmental public body, sponsored by the Home Office. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).

7.2 Changes to the definition of Regulated Activity

7.2.1 The changes introduced under the PFA not only affected the administrative arrangements surrounding checks, their frequency and ability to transfer when changing employment, but also scaled back the number of activities, involving work with children and adults, that are regulated; these are known as “regulated activities”.

7.2.2 Individuals on a *barred list* for children and/or adults cannot undertake a “regulated activity” and it is a criminal offence for the Council to allow an individual to undertake such a role without first checking whether they are on a barred list. That it is why it is important for the Council to carry out pre-appointment checks in relation to individuals appointed to positions that involve the carrying out of a “regulated activity”.

7.2.3 The revised definition of “regulated activity” was brought into force as a result of the PF Act in September 2012. A “regulated activity” is one involving close work with vulnerable groups, including children, which a barred person must not do. The legislation redefines and reduces the scope of regulated activities. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre. Other examples are demonstrated 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.

These definitions are given in more detail in the legislation but it is clear that the emphasis now is on the provision of close personal care and involvement with the individual.

Given this definition, there is now no legal requirement for a criminal records check on councillors unless it is considered that a person is undertaking any of the activities listed above, or will serve on fostering and adoption panels.

7.2.4 The majority of NHDC Councillors or co-opted members do not have such unsupervised contact with children or adults as part of their role (in terms of being employed in the supervision or personal care of a child or vulnerable adult) and therefore will not be involved in “regulated activity” under the definition of the Act. Therefore, unless activities fall within the redefined scope of “regulated activity”, Councillors are not required to be checked by virtue only of their position as a Councillor.

7.2.5 It should be noted that the law relating to elections already provides some safeguard by barring individuals from standing for election if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months’ imprisonment.

7.2.6 The Council’s approach to officers, as outlined in the DBS policy at paragraph 8.1.1 of this report, takes a proportional approach to level of risk, and it is the responsibility of managers to ensure that team members who are required to undertake close, unsupervised care of individuals – such as our play leaders, Active Communities team etc – in the course of their work are subject to a suitable level of DBS check.

8. ISSUES

8.1.1 DBS Checks for Councillors and Council policy

8.1.1 The current NHDC Council DBS policy (relating to both Officers and Elected Members) states that;

“Members may undertake certain duties on behalf of the Council which require them to have a DBS check. The process for Member check will be as above (for officers) with the Corporate Human Resources Manager responsible for being the Countersignatory and receiving the checks. Any unsatisfactory checks will be discussed in the first instance with the Member and thereafter (if necessary) with the appropriate Party Leader”.

8.1.2 Although the duties and responsibilities of Councillors do not fall under the scope of “regulated activity” and Councillors are not required to be checked if not undertaking such activity, the Council can still request that DBS checks (excluding a check of the barred lists) be carried out were they to deem it necessary. There are two levels of DBS checks that can be carried out;

- a. Standard DBS checks which show disclose previous cautions, convictions, police reprimands and warnings relating to an individual.
- b. Enhanced Checks (without a check of the barred lists) provide the information resulting from a standard DBS check with the addition of relevant police information provided by the local police force. Chief police officers are asked to provide any information which they “reasonably believe to be” “relevant and ought to be included in the [enhanced DBS] certificate”, having regard to the purpose for which the certificate is sought.

To address concerns about relevance and proportionality, the Government has recently introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check

8.1.3 Safeguarding children, young people and adults is a statutory responsibility placed on the Council, and the important role Councillors play in supporting and scrutinising services that are delivered and the arrangements that are put in place for these groups is rightly recognised. Councillors have a wide range of responsibilities and take decisions in relation to core services relating to children and adults, for example, the corporate parenting role; councillors may also through the course of their role access sensitive information about, or have contact with, children and adults, although these would not generally be seen as ‘regulated activity’ in the same manner personal care or individual teaching/coaching may be.

8.1.4 DBS checks carried out by the Council are only relevant for Councillors acting in their capacity as District Councillors. If Councillors carry out roles outside of this capacity involving work with children or adults (for example, volunteering with the scout movement or in a children’s centre), it is their responsibility to check with the relevant organisation regarding that organisation’s own DBS checking requirements.

8.1.5 The cost to the authority of each standard DBS check is £28, an enhanced DBS check is £44, plus officer time handling the submissions, maintaining a record of status and renewal. Whilst this is a necessary cost to relevant employment/roles of officers, it remains proportional in order to achieve 'best consideration' of safety and risk versus the potential cost.

8.1.6 Any proposal to undertake such checks for all 49 NHDC councillors would require additional investment by the authority, and its overall benefit would be questionable. In terms of meeting our safeguarding responsibilities, it must be remembered that this is a tool to ensure the safety of vulnerable people left in the sole charge of an individual – but its absence does not preclude councillors undertaking visits to childrens' centres, community centres, care homes etc as part of their work, since the employees at such establishments are already required to have been cleared and undertake relevant supervision duties.

8.2 HERTS COUNTY COUNCIL DBS POLICY

8.2.1 Herts County Council 'Safe Staffing Team' have confirmed that they do carry out enhanced DBS checks (no barred list check) on all county councillors. This is on the basis that they met the *previous definition* of Regulated Activity, and following a review of HCC Safeguarding by Ofsted in 2010, a recommendation that the County Council should undertake DBS checks on all their Councillors. In particular, they base their rationale for this on the following extract from the Safeguarding Vulnerable Groups Act 2006, Schedule 4, Part 1, Section 4:

- (1)(b) member of a relevant local government body (if)
- (2)(a) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority

8.2.2 All HCC members are seen to be involved in making decisions in relation to education and social services at the whole council meetings, which happen fairly infrequently (at least once a year). Some members are involved to a much greater extent within the remit of their role; this would especially be the case for those members with direct responsibility for childrens' services, and adult care services across what are seen to be more 'vulnerable groups'.

8.3 OTHER AUTHORITIES

8.3.1 Having undertaken a cursory review of other authorities, it is apparent that a number changed their policies in regard to DBS/criminal record checks in the autumn of 2013 to reflect the much more specific definition of 'regulated activity'. There appears to be a general consensus for upper tier authorities to ensure that specific roles, and especially members involved in the adoption or fostering of children are cleared at enhanced level, but the number of authorities carrying out DBS checks on all councillors is significantly lower. The matter is one at the discretion of each individual authority and thus application varies considerably.

9. LEGAL IMPLICATIONS

9.1 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.

9.2 While the statutory requirement for automatic councillor checks has been lifted, some discretion has been left to councils to continue previous arrangements if they wish. The Rehabilitation of Offenders Act regulations have been amended to allow enhanced checks on individuals who were previously covered by the definitions of regulated activity for children and vulnerable adults that were applicable prior to 10 September 2012.

10. FINANCIAL IMPLICATIONS

10.1 NHDC currently undertake DBS checks on a proportional basis, to ensure that the authority only incurs costs which are necessary to the discharge of its statutory duties in regard to safeguarding and protection of vulnerable groups.

10.2 If members were to seek Cabinet agreement to carry out DBS checks on all 49 NHDC councillors, this would require a budget of approximately £2,156 (49 x £44) to be assigned, plus relevant additional officer, printing and administration costs.

11. RISK IMPLICATIONS

11.1 The Protection of Freedoms Act's intent was to lessen the burden on organisations in regard to conducting the former 'CRB' and criminal records checks, whilst also retaining sufficient focus on those occupations and situations which most expose vulnerable children and adults to greatest risk of financial, emotional or physical abuse. The Council has an existing policy which reflects this, identifying and concentrating on individual roles of officers to maintain proportionality. Conducting checks on all members does not reduce further any risk to the authority, despite being cost and resource additive.

11.2 Ensuring a Member or Officer has a satisfactory DBS check does not ensure that that individual will not carry out a criminal activity in the future. It does, however, demonstrate that the Council undertook checks to ensure the individual had no previous record prior to them being put in a position of trust.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, 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 In taking a proportionate approach to the DBS checking of staff, and consideration of how this may apply to councillors' roles, the Council is both mindful of its safeguarding responsibility in regard to vulnerable adults and children, but also its responsibility in regard to the rehabilitation of offenders, and not precluding individuals with 'spent' convictions or unrelated offences from securing a suitable offer of employment.

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 There are no direct human resource implications arising from this report were the situation to remain 'as is'.
- 14.2 However, were members minded to recommend a variation to current policy, and notably that DBS checks be undertaken for all elected councillors, then there would be significant additional resource implications which would need to be factored into any growth proposal to Cabinet.

15. APPENDICES

- 15.1 None

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17. BACKGROUND PAPERS

- 17.1 NHDC DBS Policy (officers and members)
- 17.2 HCC DBS Policy for officers and members