

Governance Committee

18 January 2021

DBS checks for County Councillors

Report by Director of Law and Assurance

Electoral divisions: N/A

Summary

The Disclosure and Barring Service (DBS) provides a procedure through which organisations may carry out criminal record checks relating to individuals who may, on behalf of the organisation, undertake work or hold positions or responsibilities which may bring them into contact with vulnerable persons.

Prior to the 2017 County Council elections, the Governance Committee agreed that all elected members should be required to have the basic DBS check and some members in specific roles be required to have the enhanced DBS check. The Committee is being asked to review this in advance of the 2021 County Council elections.

Recommendations

- (1) That the Committee reviews the arrangements for DBS checks for county councillors, as set out in the report; and
 - (2) That action is taken by officers in light of the Committee's discussion to give effect to the arrangements the Committee wishes to see implemented.
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Proposal

1 Background and context

1.1 DBS checks provide access to a records of a person's criminal convictions and cautions. DBS checks are an important reference check for people seeking to work with children or vulnerable adults (e.g. teachers, social workers, volunteers) and for people seeking to foster or adopt a child.

1.2 There are four levels of DBS check:

- a) **Basic:** can be used for any position or purpose. Contains details of convictions and conditional cautions considered to be 'unspent'. This is the only DBS check that people can apply for themselves.
- b) **Standard:** this check contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with legislation. This check is available for roles and positions defined in law.

c) **Enhanced:** this check is for specific duties, positions and licences included in regulations (e.g. regularly caring for, training, supervising or being solely in charge of children). An enhanced level certificate contains the same PNC information as the standard level certificate but includes a check of information held by police forces.

d) **Enhanced with a barred list check:** This is only available for those carrying out regulated activity and a small number of positions outlined in the regulations (e.g. prospective adoptive parents and taxi and private hire vehicle licences). It contains the same information as the enhanced check but in addition checks against the children's and/or adults' barred lists.

1.3 Being a councillor does not require a DBS check of any form to be undertaken. Councillors do not and are not expected to undertake roles that meet the legislative requirements for DBS checks (e.g. working with vulnerable individuals). Whilst members do not carry out any of the roles specified in the regulations (e.g. care worker or social worker) there are certain aspects of their role which may on rare occasions cross into activity which may be considered relevant. The ability to visit establishments where children, young people or older people are present to receive services for which the Council is responsible is one example.

1.4 In March 2017, the Governance Committee determined that all county councillors should have the basic DBS check, with the following roles having an enhanced check:

- Chairman and Vice-Chairman of the County Council
- Regulation 44 Visitors
- Cabinet Members for Children and Young People, Education and Skills, Adults and Health and any Senior Advisors or Advisors they appoint
- Corporate Parenting Panel members
- Foster Panel members

This approach was not recommended by officers as it was not clear that there was any basis for requiring checks of all members and none of the above specific roles would lead to any member to be spending time with vulnerable individuals without others being present.

2 Matters for consideration

2.1 The DBS process should not be approached lightly. It is intended to offer safeguards in relation to individuals who come into contact with young or vulnerable people as part of their 'usual' role. It is expected that such contact will be 'regular' rather than occasional and that it would be unsupervised. In the absence of these elements it would not be expected that the DBS processes be exploited simply to provide a measure of assurance where none is needed. It must also be recognised that the information obtained is personal information which is protected from disclosure both by Data Protection legislation and that relating to the Rehabilitation of Offenders.

2.2 The concept of the 'corporate parent' is one of statutory accountability in relation to children who are or have been looked after or who may be at risk of harm within the community. It does not equate to members holding or being expected to discharge day to day operational activities in relation to children – by seeing them or visiting establishments routinely. Such contact would usually

be organised and supervised and may be considered to be an occasional rather than a regular activity for elected members. The main role is to scrutinise the County Council’s activities and service arrangements and to hold service leads to account for outcomes agreed by members, to champion the interests of those who may rely upon the safeguarding and care systems of the Council.

- 2.3 It could be said that the public may expect councillors to be in a position of trust in relation to all vulnerable people for whom they are ultimately accountable and so to be subject to a DBS check. It could also be said however that a DBS check may give a false assurance – as it is a reflection of data held by the police at a point in time not a confirmation that a person does not present a risk. There may also be a risk that the DBS check may offer a ‘licence’ to make contact with young or vulnerable persons without other safeguards being in place.
- 2.4 In June 2020 South East Employers (SEE) undertook a survey of a number of councils in the region regarding member DBS checks. Of 21 councils surveyed, West Sussex was the only one to require all members to have a DBS check. Only six require specific roles to have a DBS check. The rest do not require any councillor DBS checks. Other county councils in the area (not all of whom completed the SEE survey) were contacted for further information on their approaches – as set out in the table below. All councils, including West Sussex County Council, pay the cost of any DBS checks undertaken for councillors.

Council	DBS approach
Buckinghamshire	Standard checks for all members
Surrey	Do not carry out standard checks for all members; enhanced checks for some specific roles
Kent	All councillors receive enhanced check
East Sussex	Do not carry out standard checks for all members; enhanced checks for some specific roles
Hampshire	Enhanced check for all members
Essex	Enhanced checks for all members

- 2.5 The process for completing standard and enhanced DBS checks is fairly time-consuming. It took over a year to complete the standard DBS checks for all West Sussex county councillors following the 2017 elections. Officer input is required to carry out this process including checking hard copies of documentation provided by councillors). During the COVID-19 pandemic the process has moved to a fully digital system, so it may be less onerous following the 2021 County Council elections if this continues.

3 Options

- 3.1 The Governance Committee is asked to review the Council’s approach to DBS checks, taking into account the approaches of other councils, the resource requirements needed to carry out tests and the level of risk to the Council. Consideration may be given to only carrying out DBS checks for members fulfilling specific roles.

3.2 The Member Development Group (MDG) reviewed the approach to DBS checks in October 2020. It recognised that the process for completing checks can be frustrating and time-consuming, but overall felt that DBS checks can play an important role in providing some level of assurance. Some MDG members suggested that all county councillors should have the enhanced check whilst others suggested the current arrangements should continue. MDG suggested that consideration should be given to requiring DBS checks to be completed prior to the County Council elections, with political associations carrying these out for candidates standing for election. Candidates without political affiliation would need to carry this out for themselves.

3.3 Options include:

- a) Remove the requirement for members to complete a DBS check;
- b) Only require the roles at paragraph 1.3 to complete a DBS check, as a condition of their appointment;
- c) Require all members to have completed the basic DBS check prior to election;
- d) Continue with the current arrangements.

4 Consultation, engagement and advice

4.1 MDG considered the approach to DBS checks at its meeting in October 2020. Feedback from some other county councils has been provided as well as information on a SEE survey of councils.

5 Finance

5.1 The costs of DBS checks are: £23 for both the basic and standard checks; £40 for an enhanced check. The costs of councillors' DBS checks are currently met by the Council.

6 Risk implications and mitigations

6.1 There are risks associated with enabling members to discharge their roles – specific or general – in relation to vulnerable persons without the County Council having subjected those members to DBS checks. The Council has no higher duty than the protection of vulnerable people to whom it owes a statutory duty of care and DBS checks could provide a first level of assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.

Risk	Mitigating Action (in place or planned)
DBS checks give a false sense of assurance and confidence as to the risks posed by any particular person	Other measures and safeguards are in place (such as supervision or requiring approval before elected members make direct contact with vulnerable people)
Reputational risk to the Council – perceived as failing to protect vulnerable people by choosing not	Either: Require DBS checks for councillors are carried out Or:

Risk	Mitigating Action (in place or planned)
to adopt a system of DBS checks for members	Provide details of the other measures and safeguards in place

7 Policy alignment and compliance

- 7.1 There are no specific implications of the proposals related to the public sector equality duty. In terms of the County Council's responsibilities to reduce crime and disorder, it could be said that the imposition of conditions to eligibility to discharge certain roles as an elected councilor will contribute to the overall aims of reducing crime and disorder.
- 7.2 There are Human Rights responsibilities in so far as the carrying out of a DBS check infringes an individual's right to respect for private life given that enhanced checks could lead to disclosures of personal sensitive information which may otherwise be considered confidential or 'spent' for the purpose of the Rehabilitation of Offenders Act. This may be considered to be outweighed however by the public interest in giving assurance to vulnerable people and to society at large that elected members in a position of trust have undergone a level of vetting and scrutiny as to their suitability to discharge specific aspects of public service rather than in relation to their private lives.

Tony Kershaw

Director of Law and Assurance

Contact: Helen Kenny, Head of Democratic Services, 033 022 22532 or email: helen.kenny@westsussex.gov.uk

Background Papers

None