

Croydon Council

REPORT TO:	ETHICS COMMITTEE 18 OCTOBER 2018
AGENDA ITEM:	8
SUBJECT:	DISCLOSURE AND BARRING SERVICE (DBS)CHECKS FOR MEMBERS
LEAD OFFICER:	DIRECTOR OF LAW AND GOVERNANCE AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR HALL CABINET MEMBER FOR FINANCE AND RESOURCES
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The continued development of and the promotion of new initiatives to enhance ethical standards is a key component of the Council's approach to ethical and corporate governance and falls within the Ethics Committee's remit.	
FINANCIAL IMPACT: Any costs would need to be met from within existing budgets for Members.	
FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision.	

For general release

<p>1. RECOMMENDATIONS</p> <p>That Committee is asked to:</p> <p>1.1 Note the contents of the report; and</p> <p>1.2 Approve the revised protocol in respect of criminal records checks via the Disclosure and Barring Service (DBS) for Members attached at Appendix 1.</p>
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2. EXECUTIVE SUMMARY

- 2.1 The Council had previously required DBS checking of certain categories of Members and as part of the review of the council's processes, this report details the circumstances under which it is considered appropriate to request a DBS check of a Member.
- 2.2 The revised Protocol for DBS checks is attached at Appendix 1 for Members' consideration and approval.

3. BACKGROUND

3.1 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 reducing significantly the number of positions and circumstances in which persons would need to be the subject of a criminal records check. The provisions 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.

3.2 The 2012 Act amended the definition of “regulated activity” under the Safeguarding Vulnerable Groups Act 2006. Previously, the definition specifically included councillors who “discharged functions” relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This was understood by many of the councils to include all executive Members, relevant scrutiny Members and those serving on fostering and adoption panels. This definition has been formally repealed so that each role has to be assessed individually to ascertain whether or not it is possible to request a DBS check due to a Members’ role.

3.3 The changes in legislation effectively mean that there is no legal requirement for any councillor to undergo criminal record checking by virtue only of their position as an elected Member or Member of the executive, shadow executive or scrutiny.

3.4 In making individual assessments of whether or not a DBS check is appropriate, consideration has to be had to the definition of “regulated activities” which have the following meanings:

With regard to children, regulated activities are

- unsupervised activities involving teaching, training, instructing, caring for or supervising children, or providing advice/guidance on their well-being, or driving a vehicle only for children – if done regularly; and
- relevant personal care (even if only done once);
- registered childminding and foster caring.

With regard to adults, regulated activities involve:

- the provision of healthcare or personal care by healthcare professionals;
- 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.

3.5 Subsequent to the adoption of the Council’s current policy, the DBS formally warned another local authority which was proposing to blanket check councillors on bodies that dealt with education and social services and indicated that such a power had been removed by the Protection of Freedoms Act 2012. The DBS indicated that Councillors could be checked only where their roles had been “assessed individually to confirm whether they meet the eligibility criteria”.

4. DETAIL

- 4.1 The Monitoring Officer, with support from officers from Adults and Children's Services has undertaken an assessment of the roles fulfilled by Members on Council's Adoption Panel, Fostering Panel, Corporate Parenting Panel and Adult Social Services Review Panel to determine if their work falls within the relevant statutory definition of regulated activity. The enquiries have indicated that none of these Members' work on these bodies falls within the statutory definition as summarised in paragraph 3.4 above and set out more fully in paragraphs 3-7 in the protocol, Appendix 1 hereto. Accordingly no checks may be made of these Members. No other Members have roles on the Council which require them to undertake "regulated activities" therefore no DBS checks are currently recommended for Members.
- 4.2 In the event that this situation changes in future and a DBS check is required by one of more Members, the Protocol sets out how the information contained within the DBS will be dealt with and who will have access to the information and for what purpose as this is similarly regulated by statute.
- 4.3 Members' attention is specifically drawn to paragraphs 15-20 of the Protocol which sets out the disclosure process, which provides that where checks have been undertaken and information is disclosed to the Monitoring Officer (or her Deputies) pursuant to the Protocol, there is a prohibition on disclosure of such information to any other person, including Party Leaders, unless the Member in question has provided their written consent permitting disclosure to the additional person concerned. The reason for this is that there is a statutory prohibition on such disclosure (beyond the response in 19.1 of the Protocol) which makes it a criminal offence to disclose information from a DBS check to persons who are not entitled to hold such information. If such information were disclosed to Party Leaders with the written consent of the Member concerned, the Party Leaders would not be permitted to disclose that information further without potentially rendering themselves liable to criminal sanction.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There are no direct financial implications arising from this report.

6. LEGAL CONSIDERATIONS

- 6.1 There are no additional legal considerations arising from the contents of this report which are not set out in the body of the report.

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BACKGROUND DOCUMENTS: None

Protocol on Disclosure and Barring Service (“DBS”) Checks for Members and Co-opted Members

Background

1. The effective date of commencement for this protocol is November 2018
2. This protocol replaces all previous protocols, policies, decisions and/or precedents relating to criminal records checks for Croydon Members and Co-opted Members. For these purposes “co-opted Members” include both voting and non-voting Co-optees where they are sitting on Council Committees or Sub-Committees which exercise education or social services functions, or scrutinise education or social services functions.
3. The definition for “regulated activity” for children includes:
 - Unsupervised activities e.g. teach, train, care for or supervise children, providing moderating electronic interactive communication used predominantly by children, driving a vehicle used to convey children, or
 - Work in specified places with opportunity for frequent contact with children, like schools, nurseries, children’s homes, childcare establishments or childcare premises which includes premises where childminding and day care take place; or
 - Providers of personal care or health care. Health care or personal care are regarded as regulated activities even if they are only carried out on a single occasion.
 - Any person who supervises a person undertaking a regulated activity is also regarded as undertaking that regulated activity and any person who supervises a person who is not in a regulated activity (but would be except for the fact that they are supervised) is also in regulated activities
4. The definition for “regulated activity” for adults no longer labels adults as ‘vulnerable’ but identifies activities which lead to an adult being considered vulnerable at a particular time. The revised definition still excludes any activity carried out in the course of family relationships and personal, non-commercial relationships.
5. The requirement around the activities having to take place in a specified establishment has been removed in respect of adults– it is the activity and not the location which is considered to be relevant.
6. The frequency test has been removed – an individual only needs to engage in the activities below once to be carrying out “regulated activity” relating to adults.

7. There are 6 categories of job (plus those who manage or supervise them) which fall within the definition of “regulated activity” for adults:
 - Providing health care
 - Providing personal care
 - Social work in relation to health services or social services
 - Assisting with cash, bills or shopping
 - Assisting with personal affairs under formal appointment, for example through power of attorney
 - Transporting adults to and from care provision establishments like hospitals and care homes.
8. Supervised volunteers or occasional workers or visitors (photographers, builders, governors and inspectors who do not have regular contact with vulnerable groups) are no longer required to be checked. Schools are however required to adhere to statutory guidance issued by the Department of Education relating to standards of supervision.
9. Health Care not given by a health care professional (or supervised by one) and treatment therapy providers no longer need to be checked.
10. Standard checks – To be eligible for a standard level DBS check the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.
11. Enhanced checks – To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order and in Police Act 1997 (Criminal Records) Regulations 2002, as amended.
12. Enhanced checks with children’s and/or adults’ barred list check(s) – To be eligible to request a check of the children’s or adults’ barred lists, the position must be eligible for an enhanced level DBS check and be specifically listed in the Police Act 1997 (Criminal Records) Regulations as able to check the barred list(s).
13. Given the revised definitions introduced as a result of the Protection of Freedoms Act 2012, there is no legal requirement for a criminal records check on Members unless it is considered that the Member is undertaking any of the activities listed in paragraphs 3 or 7 above.

General Principles

14. There will not be general DBS checking of all Members as this is no longer permitted by the revised legislative requirements

The Process

15. If a Member does undertake regulated activities in relation to their role with the Council, they will be required to undergo a DBS check. The level of that check will be determined by the role they fulfil and a Member or Co-opted Member may not be appointed to or sit on any of the Bodies undertaking the role which involves “regulated activities” until they have had the requisite DBS checks and provided the necessary information to the Monitoring Officer in accordance with this Protocol. In addition, a Member may not act as a substitute or reserve Member for another Member in relation to a role which involves regulated activities unless they have had a DBS check and provided the necessary information to the Monitoring Officer in accordance with this Protocol.
16. The outcome of DBS checks is not made available to the Council but only to the individual to whom the check relates. Each individual Member and Co-opted Member who requires a check will therefore be responsible for making this information available to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the contents of the DBS certificate is disputed and the dispute is raised with the DBS within 28 days of issue of the disputed certificate. In the latter case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.
17. Where the Member or Co-opted Member has an existing up to date DBS Check for another role **and** is signed up to the DBS update service <https://www.gov.uk/dbs-update-service> , their DBS Check details will be regarded as transferrable for the time period for which the update service is valid and those DBS details may be provided to the Monitoring Officer in satisfaction of the requirements of this Protocol meaning that the Member will not need a new DBS for these purposes.
18. Any disclosure information will be made available only to the Monitoring Officer and her Deputies and will be kept locked in a secure place to which only the Monitoring Officer and her Deputies will have access. The DBS information shall be securely destroyed once the DBS expires or the Member no longer serves as a Croydon Member or Co-opted Member undertaking regulated activities.

Effective November 2018.