

## STANDARDS COMMITTEE

5 FEBRUARY 2020

### REPORT OF MONITORING OFFICER

#### A.1 DISCLOSURE AND BARRING CHECKS FOR ELECTED MEMBERS

(Report prepared by Anastasia Simpson, Katie Wilkins and Lisa Hastings)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To note the outcome of an investigation into the feasibility of introducing DBS checks as mandatory for all elected Members (having had regard to the statutory criteria).

##### EXECUTIVE SUMMARY

This report provides background information and reviews policy options in regard to criminal history checks for Elected Members. Such checks are administered by the Disclosure and Barring Service (DBS).

At its meeting on 2<sup>nd</sup> October 2019, the Standards Committee received a further report of the Monitoring Officer concerning the recommendations within "the Local Government Ethical Standards Report dated January 2019 following a review by the Committee on Standards in Public Life". The Report set out those which required legislative changes and those which the Council could adopt through best practice and the providing information on the Council's current position. Following consideration of the report the Committee resolved that the Monitoring Officer investigates the feasibility of introducing DBS checks as mandatory for all elected Members (having had regard to the statutory criteria) and reports the outcome of such investigation to a future meeting of the Committee.

At its meeting on the 23<sup>rd</sup> October 2019, the Human Resources and Council Tax Committee requested that the Council gives due consideration to whether it should conduct DBS Checks on Elected Members.

The Human Resources and Council Tax Committee determined that it is appropriate for them to consider this matter in the light of its legal duties in respect of safeguarding children and adults with needs for 'care and support', as defined in legislation including the Children Act 2004 and the Care Act 2014.

The Human Resources and Council Tax Committee resolved the following:

*"That the Deputy Chief Executive be requested to investigate the appropriateness and practicalities of introducing DBS checks for all Elected Members of Tendring District Council (such as the budgetary and legal ramifications) and that the outcome of such investigations be reported to a future meeting of the Council (having first been submitted to the Standards Committee for its recommendations) for its consideration and determination."*

The investigation process will involve:

- A review of the approach taken by other local authorities regarding the introduction of DBS check's for Elected Members;

- Engagement with the Legal, Financial and Democratic Services regarding the practical implications of introducing such policy.

Prior to 2012, Local Authorities routinely carried out Criminal Record Bureau (CRB) checks on Elected members. However, the [Protection of Freedoms Act 2012](#) created the [Disclosure and Barring Service](#) and a new system of checks. This included a more restrictive set of criteria to determine when checks could be carried out and on whom. Since 2012, the issue of DBS checking for Councillors has become a policy matter for individual Councils.

Standard and Enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the [Rehabilitation of Offenders Act \(ROA\) 1974](#) (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates). These laws only provide eligibility for DBS checks, they do not make them a requirement.

Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make. If the Council are considering asking a person to apply for either a standard or enhanced DBS check, as the employer, the Council are legally responsible for making sure the job role is eligible.

There is currently no legal basis on which the Council can currently require or seek either Enhanced or Standard DBS Checks for Elected Members. The role does not constitute a 'named position' eligible for checks, and Ward Councillors do not carry out '[regulated activity](#)' as defined by the Freedom of Information Act 2012.

The Council is of course aware that some Elected Members may have had DBS checks, albeit in another capacity, for example if they are School Governor etc.

Elected Members who do not carry out any of the specific educational and/or social service functions but who attend community events, take surgeries or visit local residents in their own home where they have access to the general public, including children, do not meet the legislative criteria, as outlined above. However, a Basic Check could be requested.

Although the legislative framework allows discretion on the issue of Basic checks. Basic checks show "Unspent Convictions & Cautions" from the Police National Computer (PNC) only, (*those that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974*). These checks do not show spent convictions, cautions, warnings, reprimands, other relevant police information, or children or adults barred list and are therefore are often considered of limited value.

Basic DBS checks also need to be applied for by the individual themselves via the Government Website.

#### **RECOMMENDATION(S)**

**It is recommended that the Standards Committee:**

- (a) Notes the outcome of the investigation into introducing DBS checks as mandatory for all elected Members (having had regard to the statutory criteria);**

**(b) endorses that the Council continues with its current approach of not requiring or seeking DBS checks for Elected Members; and**

**(c) should a Tendring District Councillor wish to pursue their own Basic DBS Check, then it is recommended that the cost is reimbursed to the individual councillor.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

Safeguarding underpins the work of the whole Council as a statutory body.

### **FINANCE, OTHER RESOURCES AND RISK**

#### **Finance and other resources**

The cost of each Basic DBS Check is £23.00 (*previously £25.00, updated October 2019*). The total cost of reimbursing the cost of checks for all 48 Elected Members would be circa £1,100.00

#### **Risk**

This report places the issue of DBS Checks before Councillors in some detail which assists the Council in managing risks as effectively as possible in the light of its wider safeguarding duties.

### **LEGAL**

The Council has legal duties in respect of safeguarding children and adults with needs for 'care and support', as defined in legislation including the Children Act 2004 and the Care Act 2014. Activities undertaken in this area can help to improve Community Safety for residents.

The Standards Committee Terms of Reference are to promote and maintain high standards of conduct by Members and Co-opted Members of the authority and to inform Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints. No concerns have been raised through the determination of Code of Conduct complaints which would give justification to requiring a mandatory scheme of basic DBS checks for elected members.

In September 2017, the Department for Communities and Local Government consulted on proposals to update the disqualification criteria for councillors and Mayors to bring it into line with both modern sentencing practice and the values and high standards of behaviours the electorate have a right to expect of the elected members that represent them.

The Government considers there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected in an inclusive and tolerant society. Where behaviour has led to a conviction or enforcement action resulting in an individual being subject to one or more of the following:

- the notification requirements set out in the Sexual Offences Act 2003;
- a civil injunction granted under Section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or
- a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.

The Council responded to the consultation supporting the proposals. Any changes to the disqualification criteria would require changes to primary legislation. In October 2018, the Government published its response to the outcome of the consultation stating they would seek to legislate to ensure that councils across England will have the power to prevent individuals from standing for election or holding office as local authority members or Mayors.

## OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

### Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The Report provides information on the practice undertaken in various local authorities, which was collected as part of the investigation.

All wards affected, the content of the report applies Council wide. Any change of practice would require Full Council approval.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

DBS checks are not mandatory unless there exists a piece of legislation that makes checks a requirement for the role being offered. For information, the different types of checks carried out by the Disclosure and Barring Service are included within the table below:

Information Searched	Type of Check			
	Basic	Standard DBS	Enhanced DBS	Enhanced DBS (including barred list check)
Unspent Convictions	Yes	Yes	Yes	Yes
Spent Convictions	No	Yes	Yes	Yes
Cautions, Warnings, Reprimands	No	Yes	Yes	Yes
Other relevant police information	No	No	Yes	Yes
Children or adults barred list	No	No	No	Yes

#### Enhanced Level Checks

Under the current legislation, Councillors, as 'named positions', are not eligible for an Enhanced DBS Check. However, it is accepted that individuals tasked with certain functions would have previously been eligible for an 'Enhanced' level check with a check against the appropriate Barred list. However, following changes in legislation, and the enactment of the Protection of Freedoms Act 2012, those positions were removed from the scope of Regulated Activity and consequentially "*an entitlement now only exists for a Councillor at 'Enhanced only' level, if the individual retains those same responsibilities*". The responsibilities being referred to here are in respect of Education or Social Care, which are responsibilities that Tendring District Council Elected Members do not currently have.

#### Standard Level Checks

It would not be possible for the Council to apply for, or to request from Councillors, Standard Level DBS Checks. These are in-depth background checks used by employers on behalf of applicants to verify if a candidate is suitable to hire for work in a specific industry. The Council is unable to

apply directly for any DBS checks for Councillors unless they fall within the rules of carrying out “regulated activity” (under the Freedom of Information Act 2012) which they do not on the basis of ward Councillors’ normal duties.

### **Basic Level Checks**

The Council could require Councillors to apply for a Basic Level DBS Check themselves, however, such checks show “Unspent Convictions” only.

At the request of their Governance and Audit Committee, Colchester Borough Council were asked to consider whether the Council should implement Disclosure and Barring Service checks for Elected Members. Their investigation into the matter included obtaining information on the approach of neighbouring, second tier local authorities, towards DBS checks (*both in October 2017 and February 2018*), to which they report, all eight responses confirmed that no checks (*including Basic Level checks*) are carried out by neighbouring authorities.

A similar exercise was undertaken by Harlow in 2019, they report that the following Council’s; *Dacorum, Maldon, Castlepoint, East Herts, Colchester, Brentwood, Basildon, Welling & Hatfield, Chelmsford, Braintree, Stevenage, Uttlesford and Epping Forest*, responded to confirm that they do not carry out DBS checks on Councillors. Following their research, Harlow is not proposing to start carrying out DBS checks on Elected Members.

To conclude, there is no legal basis on which the Council can currently require or seek either Enhanced or Standard DBS Checks on Elected Members. Although the legislative framework allows discretion on the issue of Basic Checks, there is no clear case for the introduction of such a measure: Basic checks show “Unspent Convictions” only, and are therefore of limited value, and there is no clear framework for the enforcement of such a policy as it is not required in law.

## **BACKGROUND PAPERS FOR THE DECISION**

**DCLG September 2017 - Consultation on updating disqualification criteria for Councillors and Mayors and its response published in October 2018**

## **APPENDICES**

**None**