

<u>Meeting</u> Constitution and General Purposes Committee
<u>Date and time</u> Thursday 6th October, 2022 At 7.00 pm
<u>Venue</u> Hendon Town Hall, The Burroughs, London NW4 4BQ

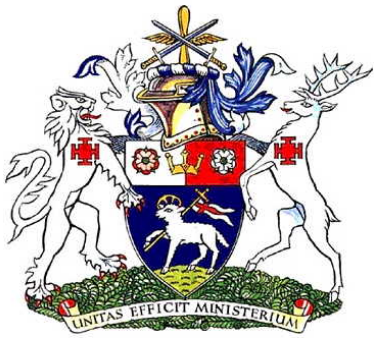
Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
16	Members DBS Checks	3 - 16

Andrew Charlwood andrew.charlwood@barnet.gov.uk 020 8359 2014

This page is intentionally left blank



Constitution and General Purposes Committee

AGENDA ITEM 16

6 October 2022

Title	Disclosure and Barring Checks for Councillors
Report of	Executive Director of Assurance
Wards	All
Status	Public
Urgent	No
Key	Key
Enclosures	Appendix 1 – Human Resources Policy – Safer Recruitment (DBS) Policy Appendix 2 – List of Councillor Roles Eligible for an Enhanced DBS Check
Officer Contact Details	Andrew Charlwood, Head of Governance, 020 8359 2014, andrew.charlwood@barnet.gov.uk

Summary

This report outlines the Council’s procedure for requesting Disclosure and Barring Service (DBS) Certificates for councillors and seeks the Committee’s agreement to confirm the arrangements.

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.

The role of councillor is not a position named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; therefore, councillors are not automatically required to have DBS checks unless they carry out regulated activities prescribed in the Protection of Freedoms Act 2012.

This report outlines the current procedure for requesting DBS checks for councillors and highlights the key legislation and law underpinning the circumstances under the Council will undertake DBS checks for councillors.

Officers Recommendation

That the Committee approve the procedure for requesting Disclosure and Barring (DBS) checks for Councillors and Independent Lay Members as detailed in this report.

1. Why this report is needed

- 1.1 The Council has a duty to protect the most vulnerable individuals from harm and distress and to protect the well-being of all individuals, in particular those in the Councils care who are particularly vulnerable or at risk such as children, the elderly or those with mental or physical impairments. In order to meet this duty, the Council must ask individuals undertaking roles which are included in the Exemptions Order 1975 to the Rehabilitation of Offenders Act 1974 to undertake a DBS application.
- 1.2 The Council currently has a Human Resources policy on Safer Recruitment (DBS) that outlines the circumstances under which Councillors and Independent Lay Members will require a DBS certificate.
- 1.3 The DBS children's barred list contains details of individuals barred from working with children and the DBS adults barred list contains details of those individuals barred from working with vulnerable adults. When recruiting to posts which undertake regulated activities with one or both vulnerable groups, the Council will request checks be made against the relevant barred list(s) as part of the DBS checks. It is a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts. Employers also commit a criminal offence if they knowingly employ a barred individual in such posts.
- 1.4 The Council maintains a list within its establishment of the posts which require DBS checks and the level of check – standard or enhanced required. Posts are reviewed for eligibility when guidance or regulatory changes from the Disclosure and Barring Service are made.
- 1.5 In relation to Councillors and Independent Lay Persons, DBS checks will only be required where these individuals undertake duties as set out in the guidance, for example if they sit on committees which discharge duties determined as regulated activity or safeguarding.
- 1.6 The position of Councillor is not named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order, therefore there is no requirement for all Councillors to obtain a DBS certificate at standard or enhanced level – they must be carrying out further activities prescribed in the legislation. The Protection of Freedoms Act 2012 outlines the definitions of regulated activity with children and adults and this impacts on the level of DBS certificate required for roles within the local authority.
- 1.7 Not all Councillors will carry out functions that mean their role is eligible to require a DBS check and there is no legal basis on which the Council can require either enhanced or standard DBS checks for all elected Members. Ward Members do not carry out regulated activity as defined by the Protection of Freedoms Act 2012. The

Council can request that basic checks are carried out for Elected Members who attend community events, undertake surgeries, or visit residents in their homes. However, these activities do not meet the legislative criteria for a standard or enhanced DBS check to be carried out.

- 1.8 A Councillor is eligible for an Enhanced DBS certificate without DBS barred list check if they meet the specific legislative criteria from the Safeguarding Vulnerable Groups Act 2006. Therefore, any Councillor who is a member of the Council's executive, or a committee or sub-committee which discharges education or social services functions is eligible as they are carrying out specific functions included in the definition of working with children.
- 1.9 A Councillor is eligible for an enhanced DBS certificate without DBS barred list check if they meet the specific criteria from the Police Act 2017 (Criminal Records) (Amendment No.2) Regulations 2013 definition of working with adults. Therefore, any Councillor who is a member of Council's executive, or a committee or sub-committee member which discharges any social services functions which relate wholly or mainly to adults who receive a health or social care service, as specified in the legislation is eligible as they are carrying out specific functions included within the definition of work with adults.
- 1.10 Councillors who carry out certain functions within their roles or portfolios which bring them into contact with vulnerable groups will be subject to an Enhanced DBS check which can include a barred list check. This would include roles that involve working directly with children or vulnerable adults, or frequently visiting specified settings, such as schools, children's centres, residential homes, or respite centres.
- 1.11 Councillors may also be subject to an enhanced DBS check if they carry out other responsibilities in the community, such as acting as a School Governor, Trustee or volunteer with organisations which bring them into contact with vulnerable groups.
- 1.12 Any individual can apply for a basic DBS check themselves via the Government website. Although the legislation framework allows discretion on the issue of Basic checks, these only show 'unspent convictions' and there is no power to enforce a policy as it is not required in law.
- 1.13 For all Councillors, in the event of a certificate returned from the DBS highlighting either a disclosed or undisclosed conviction, or any other causes for concern, the Council's Monitoring Officer must be informed. The Monitoring Officer will determine any action that may be required in-line with the Councils Members Code of Conduct. The Monitoring Officer, along with the Councillor (and where applicable the Group Chief Whip) will agree any arrangements to support the Councillor in undertaking their duties with due regard to the Council's requirements to protect potentially vulnerable individuals and groups. The Monitoring Officer may consult with the statutory post holders for the Director of Children's Services and Director for Adult Social Services, as appropriate.

2. Reasons for recommendations

- 2.1 The Councils approach to DBS checks is outlined in the Human Resources Policy – Safer Recruitment (DBS) Policy which was last approved in January 2016. Policies

which affect Members should be approved by a committee. This report seeks to formalise the position relating to DBS for councillors as currently set out in the Human Resources Safer Recruitment (DBS) Policy.

3. Alternative options considered and not recommended

- 3.1 Members could decide to introduce an alternative policy whereby the Council introduces Basic DBS checks as mandatory for all Elected Members in addition to the Enhanced checks referred to in Appendix B. However, there is currently no legal basis on which the Council can enforce DBS checks solely for being a councillor.

4. Post decision implementation

- 4.1 The Council will continue to follow the current procedure in relation to DBS checks for councillors and will communicate to individuals undertaking regulated activities that they require an Enhanced DBS check before they can discharge the functions of their specific roles.

5. Implications of decision

5.1 Corporate Priorities and Performance

- 5.1.1 The Council has a duty to protect and safeguard the most vulnerable individuals from harm and distress and to protect the well-being of all individuals, in particular those in the Councils care who are particularly vulnerable or at risk such as children, the elderly or those with mental or physical impairments.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 An Enhanced DBS check costs £38 and a Standard DBS check costs £18. The cost of these checks would need to be funded from the Members Allowances budget.

5.3 Legal and Constitutional References

- 5.3.1 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 1974 (Exceptions) Order 1975.

- 5.3.2 Regulated activity is defined by the Protection of Freedoms Act 2012.

- 5.3.3 As outlined in the Council's Constitution Article 7 - The Constitution and General Purposes Committee is responsible for considering and making recommendations to Council on (i) how it can satisfy the continuing duty to promote and maintain high standards of conduct by Members; (ii) on the Code of Conduct for Members; (iii) on ethical standards in general across the authority.

5.4 Insight

- 5.4.1 None in the context of this report.

5.5 Social Value

5.5.1 There are no direct social value implications in relation to this report.

5.6 Risk Management

5.6.1 There is a risk that the public might have lower confidence in councillors should they choose not to undertake a DBS check.

5.6.2 There is a risk that the Council will be unaware of councillors who may have criminal convictions who are undertaking regulated activity and should be prevented from doing so.

5.7 Equalities and Diversity

5.7.1 None specifically arising from this report.

5.8 Corporate Parenting

5.8.1 The Council has a duty to ensure the safety of looked after children and care leavers and to ensure all relevant safeguarding processes are in place for individuals who work closely with looked after children and care leavers.

5.9 Consultation and Engagement

5.9.1 None in the context of this report.

5.10 Environmental Impact

5.10.1 There are no direct environmental implications from noting the recommendations.

6. Background papers

6.1 Members Code of Conduct [Document 19 Members Code of Conduct | Barnet Council \(moderngov.co.uk\)](https://www.moderngov.co.uk/document/19-members-code-of-conduct-barnet-council).

This page is intentionally left blank

HUMAN RESOURCES POLICY

Safer Recruitment (DBS) Policy



Policy Summary and Objectives	Approved by
<p>The Council has a duty to ensure we protect the most vulnerable individuals from harm, distress or loss or the risk of such events.</p> <p>This policy sets out the Council’s requirements for considering how we keep individuals safe when recruiting employees, interims, volunteers or agency workers or when considering changes in their circumstances during their work with the Council.</p> <p>We have a duty of care to protect the well-being of all individuals and, in particular, those groups or individuals’ in our care who are considered to be particularly vulnerable or at risk such as children, the elderly or those with mental or physical impairments.</p>	<p>SCB</p> <hr/> <p>Date Approved: 19th January 2016</p>

In Scope
<p>This policy will apply equally to internal candidates (i.e. those currently employed by the Council) and external candidates being considered for employment or interim/volunteer positions. As a responsible employer, the Council will ask successful candidates to undertake a DBS application when applying for positions which are included in the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974.</p> <p>Specifically, this policy will apply to those posts identified within the Council where it has been determined that a specific check is required.</p> <p>This policy shall apply to Community Schools, other than where they have a policy already approved by their Governing Body in respect of safer recruitment and safeguarding practices. Schools where there is provision for children under the age of 8 years are also required to read this policy in line with the Childcare (Disqualification) Regulations 2009 and the Council’s associated guidance.</p> <p>The requirements for checks of certain posts shall apply to agency or contracted individuals required to undertake the duties within that role (see section 7).</p>

Out of Scope
<p>This policy does not apply to individuals employed by contractors. However, each contract will be required to have a method statement and assurance procedures that cover the requirements of this policy.</p> <p>This policy does not apply to Community schools or other maintained education establishments where a similar policy or statement in respect of safeguarding procedures is approved by the Governing Body.</p> <p>This policy does not apply to organisations using the Council’s DBS checking service as an umbrella body. However, each organisation must have in place similar provisions to this policy to use the Council’s checking service.</p> <p>This policy does not apply to foster carers.</p>

Key Principles
<p>The Council will only apply for checks in respect of posts that are included in the Exceptions Order to the Rehabilitation of Offenders Act 1974. It may be an offence under section 123 (2) of the Police Act 1997 to apply for a check in respect of a post not covered by the Exceptions Order 1975.</p>

The Council will require successful candidates to undertake a DBS application when applying for positions which are included in the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974. Such checks shall be a condition of the offer of employment.

The Council has [Standard Operating Procedures](#) regarding the storage, handling, use, retention and disposal of DBS applications and certificate information.

It is the responsibility of the line manager of the individual being checked to ensure that all consideration is given to the requirement for checks, the level of check required and the acceptance of the suitability of the check undertaken.

It is the requirement of the line manager, where the individual is working with vulnerable adults or children, to consult the Local Authority Designated Officer (LADO) for children and young people or the Safeguarding Manager for adults where a positive disclosure is presented. For all other disclosures, the Human Resources Director shall be consulted. Employment of an individual with a positive declaration must be agreed by the Director Children Service/Adults as appropriate following an appropriate risk assessment by the hiring line manager.

Where the work involves services where an individual is to be employed by the service user directly (normally through personal budgets) and a positive disclosure is presented, the Caldicott Guardian should also be consulted.

Policy Detail

I. DISCLOSURE AND BARRING SERVICE (DBS) BARRED LISTS

The DBS children's barred list contains details of those individuals barred from working with children and replaces List 99, the POCA list and disqualification orders. The DBS adults barred list contains details of those individuals barred from working with vulnerable adults (replacing the POVA list).

When recruiting to posts which undertake "regulated activities" with one or both vulnerable groups, the Council will request checks to be made against the relevant barred list(s) as part of the DBS check. It is a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts including most social care posts, those in education, childcare, NHS and posts in the Prison Service. Employers also commit a criminal offence if they knowingly employ a barred individual in such posts.

The Council will maintain a list within its establishment of the posts requiring such checks and the level of checks required. Posts will be reviewed for eligibility at the point of changes to the establishment, or when regulatory or guidance from the Disclosure and Barring Service requires all posts to be reviewed.

2. RECRUITMENT OF THOSE WITH CONVICTIONS

As an organisation using the DBS to assess candidates' suitability for positions of trust, the Council complies fully with the [DBS Code of Practice](#) and undertakes to treat all candidates fairly. It undertakes not to discriminate unfairly against any subject of a DBS certificate on the basis of conviction or other information revealed.

The Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation or offending background.

We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. Candidates are select for interview based on their skills, qualifications and experience.

A certificate is only requested for posts that are eligible as per the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and those prescribed by the Police Act 1997. A summary of these requirements can be [found here](#). For those positions where a certificate is required, all application forms, job adverts and recruitment briefs will contain a statement that a check will be required in the event of the individual being offered the position.

Where a DBS certificate is to form part of the recruitment process, we encourage all candidates called for interview to provide details of their criminal record at an early stage in the application process.

Safeguarding officers within relevant departments undertake to discuss any matter revealed in a certificate with the person seeking the position before withdrawing a conditional offer of employment.

Having a criminal record is not necessarily a bar to working within the Council. This will depend on the nature of the position and the circumstances and background of the offences. All offers of employment are conditional on satisfactory clearances being received and confirmed.

The Council is not permitted to employ someone who is either not registered to practice as a Social Worker via the HCPC or disqualified from working in a school setting unless they have a valid OFSTED waiver for that role. OFSTED waivers are not transferable. If it is subsequently found that they are disqualified after employment, then OFSTED must be informed and advice sought from HR about the continuation of employment. It is a criminal offence for the Council to knowingly employ an individual who has been barred. It is the responsibility of the appointing manager to ensure we meet our duties. The individual may be able to apply to OFSTED for a waiver.

3. CHECKS FOR EMPLOYEES

Any existing employee who is offered a new position within the Council will be required to undertake a new DBS application if the post involves greater access to, or responsibility for vulnerable groups, or working with a different client group regardless if they have been subject to a previous DBS application. Consideration will be given to previous checks undertaken where the employee meets the criteria set out in section 9, below.

Existing employees who have not previously been subject to a DBS application may, as a result of changes in legislation, regulations or working practices, be required to make an application during the course of their employment with the Council.

All employees will be expected to comply. Deliberate and/or an unreasonable refusal to carry out lawful and safe instructions issued and/or to comply with a contractual agreement, may lead to the employee being subject to a disciplinary investigation.

The required level or types of checks will be determined by the post held. The Council has issued guidance for managers to determine what level of check is required.

The Council requires employees to have a repeat check every three years from the date of issue of the original certificate (often perceived to be the point of expiry of the certificate).

We encourage employees to subscribe to the DBS Update Service that allows the Council to validate the repeat check. The Council will reimburse the cost of the subscription on the provision of evidence of payment.

Where an employee does not subscribe to the DBS Update Service, we will request a repeat check to be undertaken every 3 years as part of our assurance of safeguarding standards.

Employees must also undertake a new check if at any time, their personal circumstances change as to potentially change their DBS certificate contents. This includes the requirement to notify their line manager of any cautions, potential criminal charges, court appearances for criminal charges or investigation or being a party to anyone in such circumstances. (Employees who work in settings where services or education are provided to those under the age of 5 years, and for those aged 5-7 in care

settings are also required to disclose if they are living in a house with a person disqualified from working with children).

A failure to disclose at the time of recruitment (for new employees) or at the earliest known change of circumstances (for existing employees) a disclosure that would normally result in an employment offer being withdrawn may be considered gross misconduct and the individual may be dismissed without notice.

4. CHECKS FOR COUNCILLORS AND INDEPENDENT LAY MEMBERS

Checks will only be required where Councillors and independent lay members are undertaking duties as set out in the guidance, for example where Councillors and independent lay members on committees are discharging duties determined as regulated activity or safeguarding.

For all Councillors, in the event of a certificate returned from the DBS highlighting either a disclosed or undisclosed conviction, or other causes for concern, the Council's Monitoring Officer must be informed. The Monitoring Officer will determine any action that may be required in line with the Councils Code of Practice for Councillors. The Monitoring Officer, along with the Councillor (and where applicable, the group chief whip) will agree any arrangements to support the Councillor in undertaking their duties with due regard to the Council's requirement to protect potentially vulnerable individuals and groups. The Monitoring Officer may consult with the statutory post holders for the Director of Children's Services (DCS) and the Director for Adult Social Services (DASS), as appropriate.

5. CHECKS AT THE TIME OF RECRUITMENT

The Council has in place policies and procedures for ensuring we operate to the highest standards for safer recruitment.

Applicants should be forewarned that enhanced checks might include non-conviction information such as details of cautions, reprimands, warnings and may include police intelligence relating to on-going investigations and relationships with any known or suspected criminals.

As highlighted above the fact that someone has a criminal record will not necessarily lead to a bar in employment with the Council, and a discussion will be arranged to discuss the nature of the criminal record with the applicant who has disclosed they have a criminal record.

During the interview, the applicant should be able to give a full account of the circumstances of the offence(s), any extenuating circumstances and of their efforts to avoid re-offending.

Where assessment against the risk criteria indicates that the applicant could be employed on a conditional basis provided that extra safeguards are put into place, the appointing officer should discuss these with the applicant and explain the reasons for them.

Failure to reveal criminal history could lead to withdrawal of the conditional offer of employment.

6. OVERSEAS CANDIDATES

All persons appointed to a post, or seeking to volunteer with children and/or vulnerable adults who have lived outside the United Kingdom must undergo a DBS check regardless of their length of stay in the UK. They will also be required to provide a Certificate of Good Conduct or similar document from countries in which they have lived/worked.

Although it may be of limited value to ask a person who has little or no previous residence in the UK to apply for a certificate, if that person seeks to work in the regulated childcare sector, the employer is required to check the DBS Children's Barred List through the application process and similarly, if a person seeks to work with vulnerable adults, the employer is required to check the DBS Adults Barred List.

7. AGENCY WORKERS, INTERIMS, VOLUNTEERS AND CONTRACTORS

Those responsible for hiring or engaging agency, contract workers, interims or volunteers on behalf of the Council must ensure that the requirement for such individuals to have completed appropriate levels of DBS checks (and that such certificates are satisfactory) forms part of any contractual agreement.

Where duties being covered, or covered in part, are for a post identified within the Council's establishment as requiring a check, the hiring line manager is responsible for ensuring the appropriate level of check is either carried out or validated as well as ensuring the documentation is recorded for the purposes of auditing such arrangements.

8. PORTABILITY AND UPDATE SERVICE

The Council will accept original certificates from applicants in respect of roles undertaken with previous employers (or other roles within the Council) where the applicant also subscribes to the DBS Update Service and where the level of check is sufficient for the duties undertaken.

9. DECISION-MAKING AND MANAGING RISKS

Assessing and managing the risk of employing a person with a criminal record, or about whom positive information has been revealed following a check, means comparing the candidates skills, experience and conviction circumstances against the risk criteria identified for the job and deciding on the relevance of the conviction or other information.

Having a criminal record will not necessarily bar someone from working for or being engaged by the Council. This will depend on the background to the offence(s) and the nature of the position being sought.

Addressing issues relating to criminal offences needs an objective common sense approach which takes account of the following:

- The employer's duties in law
- The nature of the crime
- When it happened
- The circumstances involved
- The sentence
- Patterns of offending
- Efforts to avoid re-offending
- Job requirements
- Safeguards against offending at work
- Possible reactions of employees, customers etc, objectively assessed.

10. ESCALATION

The line manager is responsible for ensuring all relevant checks and current certificates are in place including renewals, re-checks or self-declarations.

Line managers and individuals will be informed 8 weeks prior to any expiry or renewal period of the requirement to renew. Four weeks before the expiry, the Head of Service shall be notified of any outstanding checks or renewals. On the date of expiry, should no check or self-certification be in place, the relevant statutory officer (DCS or DASS) shall receive any exception reports. Schools should also have a similar process in place.

II. AUDITING AND ASSURANCE

The Council's internal audit plan shall include a sample check of identified roles requiring DBS checks. This shall include a sample from recruitment activity, self-certification and positive disclosures.

Each Delivery Unit Director (with copies for the relevant DCS and DASS) shall receive a quarterly assurance report from HR Services about the status of checks and self-certifications.

The Strategic Commissioning Board (Assurance) shall receive any exceptions reporting on a monthly basis where posts are not covered by the appropriate level of checks, or where individuals have failed to provide self-certification.

Policy Administration

Decision-making body: General Functions Committee

Enabling Board: Workforce Board

Policy Owner: Human Resources Director

Date of Review: (Annual, from the date of approval)

Date of Expiry: (One year from the date of approval)

Other Relevant Information

This should be read in conjunction with:

Standard Operating Procedures for DBS Checks (to be revised)

Recruitment and Pre-Employment Policies

Data Protection Policies

This policy has been written with consideration of the following legislation and regulations:

- The Protection of Freedoms Act 2012
- Human Rights Act 1998
- Data Protection Act 1998
- The Police Act 1997
- The Safeguarding Vulnerable Groups Act 2006
- The DBS Code of Practice
- The Rehabilitation of Offenders Act (ROA) 1974
- Childcare (Disqualification) Regulations 2009
- The Criminal Justice and Court Services Act 2000
- The Police Act 1997 (Criminal Records)(Amendment) Regulations 2013
- Keeping Children Safe in Education 2015

Appendix 2 - List of Councillor Roles Eligible for an Enhanced DBS Check

- Committee Members and Substitute Members of the Children, Education and Safeguarding Committee
- Committee Members and Substitute Members Adults and Safeguarding Committee
- Members of the Corporate Parenting Advisory Panel
- Lead Member for Children's Services

This page is intentionally left blank