



## Constitution and General Purposes Committee

6 October 2022

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

### 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).