

23 January 2019

Policy, Projects and Resources Committee

Safeguarding Report

Report of: *Kim Anderson, Partnership, Leisure and Funding Manager*

Wards Affected: *All Brentwood Borough Wards*

This report is: *Public report*

1. Executive Summary

At Ordinary Council on 14 November 2018 (Min 202 refers) a motion was raised that all Members should have a Disclosure and Barring Service (DBS) check as part of their role as an elected member. It was recommended that Officers investigate the requirement including budget implications and that a report be brought back to Policy, Projects and Resources Committee for their consideration. The report is before members tonight.

2. Recommendations

2.1 That if Members feel it appropriate, they can request a Basic Disclosure and Barring Service Check.

2.2 That all Members attend a Safeguarding training session in 2019.

3. Introduction and Background

3.1. At Ordinary Council on 14 November 2018 (Min 202 refers) a motion was raised that all Members should have a Disclosure and Barring Service (DBS) check as part of their role as an elected member. It was recommended that Officers investigate the requirements, including budget requirements) from the Disclosure and Barring Service, the Council's Constitution and any other legislation to determine whether it is a requirement or not.

3.2. There are three types of DBS check, Basic Standard and Enhanced.

3.3. Brentwood Borough Council is a second-tier authority and as such does not have direct responsibility for Children, Adults with Care and Support Needs or for Education, this is the responsibility of Essex County Council.

- 3.4. Members were offered safeguarding training at two sessions in September and October 2018.
- 3.5. In November 2018 officers contacted the Disclosure and Barring Service (DBS) to get clarification on whether the role of a (2nd tier) local councillor requires a DBS check and if so at what level. Their response is attached in Appendix E of this report.
- 3.6. Officers have also contacted other district authorities to determine if it is a requirement for their elected Members to have a DBS check.
- 3.7. It is proposed that further safeguarding training is offered to members in 2019.

4. Issues, Options and Analysis of Options

- 4.1. The main issue is to determine whether there is legal requirement for Members to have a DBS check and if so what is the level of that check. Officers have sought guidance from the DBS and from the Council's Constitution.
- 4.2. The Council's Constitution sets out the seven 'Nolan principles' of public life which members should adhere to as part of their role.
 - a) Selflessness – Holders of Public office should act solely in terms of the public interest
 - b) Integrity – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
 - c) Objectivity – Holders of public office must act and take decision impartially, fairly and on merit, using the best evidence and without discrimination or bias.
 - d) Accountability – Holders of public office are accountable to the public for the decisions and actions and must submit themselves to the scrutiny necessary to ensure this
 - e) Openness – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing
 - f) Honesty – Holders of public office should be truthful
 - g) Leadership – Holders of public office should exhibition their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

- 4.3** A **basic disclosure** will show details of any unspent convictions. This means that an applicant would not need to disclose a 'spent' conviction if asked for a self-disclosure by an employer or other interested party (e.g. insurance provider) about unspent criminal convictions. Basic Disclosures are processed by the DBS for applicants living and working in England and Wales and Disclosure Scotland for applicants in Scotland.
- 4.4** A basic disclosure can be requested by an individual on themselves for any purpose, and by the employer for any role, with the **consent** of the applicant. It is particularly useful where employers have some roles that are not eligible for a Standard (e.g. Financial Services positions) or Enhanced (e.g. working with children) check but wish to set a policy that all staff and contractors should be pre-employment checked at some level.
- 4.5** After completing the required steps, the DBS will issue a Basic Disclosure certificate. A Basic Disclosure will show convictions considered unspent under the Rehabilitation of Offenders Act (1974) as amended by the Legal Aid, Sentencing and Punishment Act 2012. This differs from a Standard or Enhanced criminal records check, which will contain information on spent convictions as well as any Vetting and Barring information requested, subject to the DBS Filtering Rules.
- 4.6** Basic Disclosures are available in addition to Subject Access Reports issued by the police, which individuals can obtain from their Local Police Force under the Data Protection Act, and Police Certificates for foreign visas etc., which are issued by the Association of Chief Police Officers.
- 4.7** The Basic Disclosure can be done directly through DBS.
- 4.8** **Standard Disclosures** will show details of any convictions or cautions received by the subject, unspent or spent*. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 the Government outlined certain roles/professions where an employer (or other interested party) can ask an individual to disclose any spent and unspent criminal convictions.
- 4.9** **Enhanced Disclosures** will show the details of any convictions or cautions received by the subject, spent or unspent*, plus any 'Approved Information' held by the Police. Where an applicant is working in 'Regulated Activity' as defined by the Protection of Freedoms Act 2012, the employer (or interested party) can also request a check of the Vetting and Barring Lists for working with children and/or adults.
- 4.10** Standard and Enhanced Disclosures can only be requested by an individual or organisation that is eligible to ask an 'exempted' question about an individual's spent convictions. Organisations are allowed to ask

this question when they are placing the applicant in a restricted role or where the organisation is endorsing the subject to work in a restricted role. It is essential that the organisation has the power to deny the role or endorsement to the subject if the Disclosure is not satisfactory. For employers this means they do not place the individual in the role. Endorsers must have a means of withholding their endorsement, which generally means they have to issue a document to those they do endorse (identity card or certificate), or publish (online) a list of currently endorsed individuals. Withholding endorsement is affected by not issuing the document or not listing the individual.

- 4.11** Disclosures can contain information regarding an individual’s criminal record, including spent and unspent convictions, whether a person is listed on a children’s or adult’s barring list. The Disclosure may also contain any other information that a local police force or government body feel is relevant. Disclosures that are requested on individuals that have no criminal record will confirm that fact.
- 4.12** The DBS will only issue a single Disclosure Certificate direct to the applicant as their personal information. The employer will then need to request that the applicant presents this Certificate, to confirm if and what the content is.
- 4.13** The following table provides a summary of the information included in a disclosure:

Information included	Basic	Standard	Enhanced
Unspent convictions	Y	Y	Y
Spent convictions	N	Y	Y
Cautions	N	Y	Y
Inclusion on children’s lists (where relevant to the role)	N	N	Y
Inclusion on adult’s lists (where relevant to the role)	N	N	Y

- 4.14** Under the Rehabilitation of Offenders Act 1974, a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the Act. Before asking an individual to apply for a DBS Disclosure, you are legally obliged to ensure you are entitled to ask for a DBS Check. If the role being offered or currently undertaken is not eligible, the final option would be to request a Basic Check.

- 4.15** Standard level DBS checks can be obtained for positions included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. Enhanced level DBS checks can be obtained for positions included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and in Police Act 1997 Regulations. The Protection of Freedoms Act 2012 created a new definition for 'Regulated Activity'. Where Regulated Activity is being undertaken by the employee a check of the DBS Barred Lists for working with children and/or Vulnerable Adults can be requested.
- 4.16** DBS Regulated activity is a term used to describe certain jobs functions carried out by an employee as defined by the Disclosure and Barring Service (DBS). These requirements are important as they determine eligibility for an Enhanced Level DBS check and a check of the DBS Barred lists. Regulated Activity is broken down into two separate groups 'Activity with Children' and Activity with Adults' (formerly termed Vulnerable Adults). The Home Office, Department of Education and Department of Health provide guidance that describes the types of activity and certain frequency tests which determine the if the role can be classed as Regulated Activity. Assistance in relation to children comprises, in summary:
- a) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
 - b) Work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers.
- 4.17** The response from other district local authorities is that their Members are not required to have a DBS check in respect of their role as an elected Member, however a number of authorities do provide specific safeguarding training for their Members.
- 4.18** The response from the Disclosure and Barring Service (Appendix E) also states that Members not be eligible for an Enhanced Level Disclosure.
- 4.19** Disclosures cannot be thought of as licenses, and they do not expire after a certain period. Disclosures are a more like a snapshot of a person's criminal record. If the government updates the individual's criminal record the day after a Disclosure is generated, then the Disclosure will be almost immediately inaccurate. This scenario is unlikely to occur for most applicants, but it does highlight the true significance of a Disclosure document.
- 4.20** Therefore, it is recommended that periodic rechecks are undertaken at a frequency appropriate for the role. The DBS recommend 3 years as the

maximum recheck period before carrying out another criminal record check, although some organisations, such as hospitals, suggest a 1 year recheck period. It remains the final responsibility of the organisation to specify how long it is before a re-check is requested.

- 4.21** It is also recommended that if any elected Members have concerns about an individual that they refer it to the relevant officer (Operational Safeguarding Lead – Kim Anderson) or take an officer or another ward member with them if they are visiting an individual in their homes and that that where possible meet their constituents in a public place to safeguard themselves as much as possible.

5.0 Reasons for Recommendation

- 5.1 Ultimately this is the decision of the ‘employer’ to ensure they request the correct level of Disclosure for the work their employees are undertaking. Basic Disclosures can be requested by an individual or by the employer for any role, including those adhering to the Cabinet Office Baseline Personnel Security Standard (BPSS). Both Standard and Enhanced DBS checks could not be justified as a requirement from the Disclosure and Barring Service in respect of the role of an elected Member with the guidance that has been provided by them. However, it may be requirement for an elected member in their professional lives or in a role outside of that of being an elected member to have a DBS check.

6.0 References to Council Priorities

Safeguarding sits under the Community and Health Strand of the Council’s Corporate Plan 2016-19 in supporting our most vulnerable residents to feel safe. It also sits under the Transformation strand in that we continue to improve our governance arrangements leading to faster and more effective decision making.

7.0 Implications

Financial Implications

Name & Title: Jacqueline Van Mellaerts, Interim Chief Finance Officer
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- 7.1 The costs for a basic check is £25 plus any administrative fee. If the decision is for all members to obtain a basic DBS check then it would cost £925 (plus any administrative fees). Currently there is no allocated budget for members to have a basic DBS check. If Members wish to, then they can take this from their allocated Member’s Allowance.

Legal Implications

Name & Title: Daniel Toohey, Head of Legal Services and Monitoring Officer

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The recommendations within this report are lawful. The role of elected member does not by itself fall within the statutory definition of 'regulated activity' set out in the Protection of Freedoms Act 2012, which is the requirement for undertaking an enhanced DBS check.

As the Council also does not discharge education or social services functions, there are no specific roles which may warrant assessment of whether an enhanced or standard DBS check is necessary to reflect contact with groups of service users or establishments used for young and/or vulnerable people.

Members are eligible for a basic disclosure check which would reveal unspent convictions only and which can be requested by any individual for any purpose.

8.0 Appendices

Appendix A	Standards eligibility guide – DBS
Appendix B	Child workforce guide - DBS
Appendix C	Adults workforce guide - DBS
Appendix D	Other workforce guide - DBS
Appendix E	Response from Disclosure and Barring Service
Appendix F	Regulated Activity, DBS Filtering Rules, Documentation for Basic Check.

Background documents:

Councils Constitution - Pages 151-2

Brentwood Borough Council's Safeguarding Policy and Procedures

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