

Report to: Governance Committee

Date of meeting: 26 September 2024

By: Deputy Chief Executive

Title: Disclosure and Barring Service (DBS) Checks for Councillors

Purpose: To consider arrangements the County Council has in place in relation to criminal record checks for Councillors.

RECOMMENDATIONS

The Governance Committee is recommended to recommend the County Council to:

- 1) Approve that an Enhanced Disclosure and Barring service check be undertaken for Members performing the roles listed below:
 - a) Nominated substitutes for the Corporate Parenting Panel (as set out in paragraph 3.2) and;
 - b) Members of the Discretionary Transport Appeal Panel (as set out in paragraph 3.4).
 - 2) Approve that all Members are requested to undertake a basic criminal record check after the County Council elections in May 2025;
 - 3) that the Council's DBS Policy Statement is updated to include reference to the changes proposed in Recommendations 1 and 2 as set out in Appendix 2.
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1 Background

1.1 In 2022 the Government announced an Independent Review of the Disclosure and Barring Regime. The purpose of the review was to provide assurance to Ministers on the effectiveness of the Disclosure and Barring Service regime in safeguarding children and vulnerable adults. The subsequent review was published in 2023 and is attached at Appendix 1.

1.2 The review included consideration of the eligibility of local councillors for criminal record checks provided by the Disclosure and Barring Service ('DBS checks'). On this point the review made the following recommendation:

Recommendation 5: local councillors

That an enhanced criminal record check is made mandatory for all councillors in Unitary and Single Tier Authorities who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults. I accept that this would require legislation and therefore some inevitable delay, so I further recommend that these authorities are encouraged to adopt this procedure as best practice pending legislation.

1.3 The Minister for Local Government, subsequently wrote to the Leaders of all Unitary and Upper Tier Authorities in England urging enhanced DBS checks to be adopted as best practice for all Councillors being considered for appointment to any committee 'which discharges education or social services'.

Disclosure and Barring checks

2.1 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.

2.2 When considering matters relating to criminal record checks, it should be kept in mind that Councillors are not required to undergo a DBS check by virtue of their role as a Councillor generally. The County Council must therefore take care not to seek too much information since, for example, an organisation can only ask for a check where the nature of the role makes it appropriate.

2.3 There are various levels of checks depending on the nature of the role:

Type of check	Description
Basic check	This check shows unspent convictions and conditional cautions. Cost: £18
Standard check	This checks for spent and unspent convictions, police cautions, reprimands and final warnings. Cost: £18
Enhanced check	This includes the same as the standard check plus any additional information held by local police (such as complaints or third party referrals) that is considered relevant to the role. Cost: £38.
Enhanced check with Barred List check	This is like the enhanced check, but includes a check of the two DBS lists of people barred from working with (1) children and (2) vulnerable adults. Cost: £38

2.4 A standard or enhanced DBS check can only be requested for specific roles, primarily those where there is direct contact with vulnerable people or access to confidential and sensitive information. A basic DBS can be requested for any role.

2.5 The Council's DBS Policy Statement (attached at Appendix 2) states that DBS Disclosures for Councillors fulfilling the roles set out below will be monitored by Business Administration and refreshed every 4 years. Disclosures are then sent to the individual. The unique reference number and date of issue of a Councillor's disclosure will be recorded as evidence of the check having been undertaken, but this will not indicate whether the check has resulted in a positive disclosure.

At its meeting in October 2017 the Council agreed that the roles set out below required an enhanced criminal record check:

- Members of the Fostering Panel
- Members of the Corporate Parenting Panel
- Lead Member for Children and Families
- Lead Member for Education and Inclusion, Special Educational Needs and Disability
- Lead Member for Adult Social Care and Health

2.6 Where a DBS check results in a positive disclosure (i.e. a criminal background or details that may be of concern) the Councillor would be requested to meet with the Chief Executive and Monitoring Officer to discuss the disclosure and its impact on their suitability to undertake certain roles. If the outcome of those discussions is that there should be a restriction in their role, then this would be additionally shared with the Member's group leader where relevant.

2.7 As part of the review of the Council's practice we have sought information as to the practices of other Councils:

Organisation	Approach	
	All Members	Specific Roles
Brighton & Hove City Council	None	Enhanced check
Hampshire County Council	Enhanced check	Enhanced check
Kent County Council	Enhanced check without Barred List check	Enhanced check with Barred List check
Surrey County Council	None	Enhanced check on Cabinet members and Chairs of Adults' and Children's Scrutiny Committee
West Sussex County Council	Standard check	Enhanced check on: <ul style="list-style-type: none"> • Chairman and Vice-Chairman of the County Council, • Regulation 44 Visitors • Cabinet Members for Children and Young People, Education and Skills, Adults and Health • Corporate Parenting Panel members • Foster Panel members

3 Matters for consideration

Corporate Parenting Panel.

3.1 The Corporate Parenting Panel (CPP) monitors and ensures the well-being of children who are looked after by the Council (in children's homes or as fostered children). The Panel meets four times a year and is comprised of seven members.

3.2 Whilst members of the CPP are already required to undertake enhanced criminal record checks, no such requirement is in place for substitutes. It is recommended that each political group is asked to have a nominated substitute for the Panel and that they be required to undertake an enhanced criminal record check. In the event that a member of the CPP was not able to attend a meeting only the nominated substitute would be able to replace them at the meeting.

3.3 An alternative approach which has been adopted by some local authorities is to prohibit substitutes on their Corporate Parenting Panels. This would mean fewer councillors would be required to undertake an enhanced criminal record check, but risks the meeting being inquorate.

Discretionary Transport Appeal Panel

3.4 The Discretionary Transport Appeal Panel makes decisions on the award of transport assistance to local students. The Panel is comprised of three members and meets approximately nine times a year. Members of the Panel are not currently required to undertake enhanced criminal record checks however they have voluntarily agreed to be subject to an enhanced check. Given the nature of the issues it considers, it is inevitable that the Panel are provided with confidential information relating to families and their children and it is therefore recommended that Panel Members are the subject of an enhanced check.

Criminal Record checks for all Members

3.5 The Member Reference Group considered the specific roles of Members set out in this report earlier this year and agreed with the proposals that enhanced DBS checks should be required for substitutes for the Corporate Parenting Panel and for members of the Discretionary Transport Appeal Panel. The Reference Group also suggested that all Members should be required to undertake an enhanced check. The main reasons given in support of this view are:

- all Members have the potential to come into contact with vulnerable individuals via their roles in their local community.
- that members of the public would expect councillors, who hold a position of trust, to have a DBS check,
- DBS checks would offer a level of assurance to members of the public; and
- DBS checks for all councillors could help protect the Council's reputation.

3.6 As the table in 2.7 shows, some local authorities do have arrangements in place requiring all councillors to have criminal record checks. However there is some variation in the type of DBS check which is applied. As set out in paragraph 2.2, Councillors are not required to undergo a DBS check by virtue of their role as a Councillor generally, and failure to agree to one would not debar them from being a Member of the authority. Putting in place requirements for DBS checks should not be approached lightly and checks should only be required where there is clear justification. Therefore, it is proposed that all Members are requested to agree to a basic check, with only specified roles being required to undertake enhanced DBS checks. This option seeks to balance the need to protect individual Councillors' private data and giving some level of assurance to the members of the public.

Timing of checks

3.7 If changes to the Council's current approach to DBS checks for councillors are taken forward and agreed by Full Council, it is proposed that following the elections in May 2025 those elected councillors will be contacted about DBS checks.

4 Conclusion and Reasons for Recommendation

4.1 Following a review of the Council's arrangements, having sought the views of the Member Reference Group and for the reasons set out in the report, the Governance Committee is recommended to recommend to County Council to:

- 1) Approve that an Enhanced Disclosure and Barring service check be undertaken for Members performing the following roles:
 - a) Nominated substitutes for the Corporate Parenting Panel (as set out in paragraph 3.2) and;
 - b) Members of the Discretionary Transport Appeal Panel (as set out in paragraph 3.4).
- 2) Approve that all Members are requested to undertake a basic criminal record check after the County Council elections in May 2025;
- 3) That the Council's DBS Policy Statement is updated to include reference to the changes proposed in Recommendations 1 and 2 as set out in Appendix 2.

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