Standards Committee

**Ward:** ALL  
**Portfolio:** Law and Governance

**FROM:** Monitoring Officer  
**Date:** 11 September 2018  
**SUBJECT:** Disclosures and Barring Service (DBS)

| **Summary:** | The Disclosure and Barring Service (DBS) helps prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). This report updates members on a recent decision taken by Somerset County Council regarding DBS checks for elected members and asks the Standards Committee to consider the need for a similar approach at Mendip District Council. |
| **Recommendation:** | That Standards Committee note the report and consider whether or not to make a recommendation to Council that a similar approach to DBS checks for Elected Members is adopted at Mendip District Council. |
| **Direct and/or indirect impact on service delivery to our customers and communities:** | A robust constitution, strong ethical standards framework, and appropriate guidance ensure high standards of community leadership to our customers and communities. |
| **Legal Implications:** | As outlined in the report. |
| **Financial Implications:** | An individual DBS check costs between £25 and £44. |
| **Value for Money** | See above: the report outlines a statutory requirement or a requirement to ensure the Council's decision making framework is robust, mitigating risk or legal challenge. |
| **Equalities Implications:** | None identified. |
| **Risk Assessment and Adverse Impact on Corporate Actions:** | The impact of the new ethical standards regime, the emerging statutory framework for local government and the need to produce appropriate guidance for Members' clarification is having an impact on delivery of other corporate priorities. |
| **Scrutiny Recommendation (if any)** | Not relevant |
INTRODUCTION

The Disclosure and Barring Service (DBS) helps prevent unsuitable people from working with vulnerable groups, including children. It 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.

Currently elected members are not required to have DBS checks, the Committee is being asked whether this position should be reviewed and, if so, whether the Council should undertake basic checks for all members or whether, in relation to particular roles of members, there are grounds for making enhanced checks before a member is eligible to discharge those roles.

BACKGROUND

At a meeting of Somerset County Council (SCC) in July 2015 the recommendation of the Standards Committee was accepted that all members, whose duties bring them into contact with young children or vulnerable adults, should have DBS checks. This included: the relevant Cabinet members; members of the Scrutiny Committees for Children and Families and/or Adults and Health; members of the Adoption and Foster Panels; any member who partakes in a visit to a Children's home and whose Corporate Parenting responsibilities involve interaction with children; and members appointed to Panels or working groups relating to education or adult social care services.

In addition all other members were advised and invited to have DBS checks. This approach was based on an assessment of the relevant legislative requirements.

In October 2017 the SCC Constitution and Standards Committee requested that the Monitoring Officer present a report to Council to revisit the policy with a view to requiring all members to be DBS checked. This was deemed appropriate due to the continuing emphasis on safeguarding and an assessment of DBS policies of other councils in relation to members.

The recommendation of the Monitoring Officer at SCC was that the Constitution and Standards Committee recommended to SCC Council that the existing DBS policy is altered in the following way:

1. An extension of the current mandatory requirement to have Enhanced DBS checks without barred list checks to: all Cabinet members; Junior Cabinet Members; members of the Adult and Children & Families Scrutiny Committees; members of the Adoption and Foster Panels; members of the Corporate Parents Board; and Members appointed to Panels or working groups relating to education or adult social care services.
2. That all other members and co-opted members are required to undergo a Basic DBS check.
3. That DBS checks required under (a) and (b) above will be carried out by the Council immediately following each Council election to ensure that such checks are renewed on a quadrennial basis.
4. That the Monitoring Officer maintains a register of approved applications.
This recommendation was based on SCC’s interpretation of the legislative requirements, some initial advice from the DBS service, emerging approaches of other councils and an assessment of the risks associated with the options identified and explored.

Clearly elected members at Somerset County Council tend to have far greater exposure to vulnerable groups due to their social care and education responsibilities than Mendip District Councillors.

**LEVEL OF CHECKS**

The DBS is a non-departmental public body, sponsored by the Home Office. It was formed in 2012 by the merger of the Criminal Records Bureau (“CRB”) and the Independent Safeguarding Authority (“ISA”) under the Protection of Freedoms Act 2012 which made changes to the arrangements for carrying out criminal records checks. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).

There are various level of checks that can be applied for –

1. **Basic disclosure certificate** - shows any ‘unspent convictions’ someone may have in the UK. A basic disclosure shows a conviction record at a point in time, so there is no set time that it lasts for. Individuals can apply and pay for a Basic Disclosure themselves. This is not the same as a DBS Standard check

2. **Standard disclosure certificate** - checks for spent and unspent convictions, cautions, reprimands and final warnings.

3. **Enhanced disclosure certificate**, this includes the same as the standard check plus any additional information held by local police that’s reasonably considered relevant to the role being applied for.

4. **Enhanced disclosure certificate with barred list checks**, this is like the enhanced check, but includes a check of the DBS barred lists. Under the legislation no elected member would qualify for this level of check.

**LEGAL POSITION**

Legislation in 2012 significantly amended definitions of regulated activities with children and adults which impacted on the necessity of DBS checks in relation to elected members. It is reasonable to say that the legislative requirements allow for a degree of interpretation and this has contributed to policy variations around the country. The position of elected members is not a standalone position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. However the level of check that can be carried out will depend on the role that is being carried out. The Police Act 1997 (Criminal Records) Regulations 2002 (provides that a member or co-optee will be undertaking regulated activity if they:

(a) discharge, as a result of their membership, any education or social services functions of the Council;
(b) are a Cabinet Member (at SCC the Cabinet discharges education and social services functions) (this can be further defined as ‘decision makers’);
(c) are a Member of a committee of the Cabinet; or
(d) they are a Member of a committee of the Council which discharges education or social services functions.

The SCC Monitoring Officer concluded that Members falling under the above definition require an Enhanced DBS check and that in the light of current practice and advice is that only Cabinet members qualify for certain for an Enhanced check.

Members who do not carry out activities which fall within the above categories but in the normal course of their Council business 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 for a Standard or Enhanced Check. However, a Basic Check from Disclosure Scotland can be requested (Disclosure Scotland is the part of the DBS which carries out basic checks regardless of where you live).

**OTHER CONSIDERATIONS**

- The challenge with the legislation is the interpretation of the term ‘discharge any education or social services functions’. Some authorities have interpreted this as meaning all members of a local authority which has corporate parent or duty of care responsibilities, which would include Mendip District Council. At the other end of the spectrum the interpretation is that this means the lead decision makers at an authority with direct education or social care responsibilities e.g. Cabinet Members at SCC.

- DBS checks carried out by the Council are only relevant for members acting in their capacity as elected members. If members carry out roles outside of this capacity involving work with children or adults (for example, volunteering with the scout movement or in a children’s centre), it is their responsibility to check with the relevant organisation regarding that organisation’s own DBS checking requirements.

- There are Human Rights responsibilities in so far as the carrying out of a DBS check infringes an individual’s right to respect for private life given that enhanced checks could lead to disclosures of personal sensitive information which may otherwise be considered confidential or ‘spent’ for the purpose of the Rehabilitation of Offenders Act. This could deter members from standing for election or for particular roles even where the individual simply objects to interference with privacy rather than seeking to hide significant evidence of risk. This may be considered to be outweighed however by the public interest in giving assurance to vulnerable people and to society at large that elected members in a position of trust have undergone a level of vetting and scrutiny as to their suitability to discharge specific aspects of public service rather than in relation to their private lives.

- There are risks associated with enabling members to discharge their roles – specific or general – in relation to vulnerable persons without the Council having subjected those members to DBS checks. The Council has no higher duty than the protection of vulnerable people to whom it owes a statutory duty of care and DBS checks could provide a first level of assurance that an individual in a position of trust does not present a direct risk of harm to such individuals.
• The counter risk is that DBS checks may give a false sense of assurance and confidence as to the risks posed by any particular person and that other measures and safeguards (such as supervision or requiring approval before elected members make direct contact with vulnerable people) would be regarded as unnecessary.

• The risk to the Council’s reputation may also be a factor – in terms of whether a Council would be perceived as failing to protect vulnerable persons by choosing not to adopt a system of DBS checks for members.

**RECOMMENDATIONS**

That the Standards Committee note the report and consider whether or not to make a recommendation to Council that a similar approach to DBS checks for Elected Members to that recently adopted at Somerset County Council is developed at Mendip District Council.

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**Background Papers:**