

CONSTITUTION & DEMOCRATIC SERVICES COMMITTEE

Date of Meeting	Tuesday, 13 June 2023
Report Subject	Disclosing and Barring Service Checks for Councillors
Cabinet Member	Cabinet Member for Governance and Corporate Services including Health and Safety and Human Resources
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

The Council has a policy that it will seek enhanced disclosures from the Disclosure and Barring Service (DBS) in respect of Councillors undertaking specific roles within the Council. This policy was last reviewed in 2012 and it needs to be refreshed in light of current practice and legislation.

It is a common request that enhanced checks should be made in respect of all Councillors. Whilst the sentiment behind the request is understood there are limitations within the legislation that restrict the ability of the Council to undertake detailed checks on all Councillors. The Disclosure and Barring Service is careful to operate within the restrictions placed upon it and so it is likely that the Council will be able to obtain an enhanced check for a limited number of Councillors.

RECOMMENDATIONS

1	<p>That the Council should undertake DBS checks on Councillors as follows:</p> <ol style="list-style-type: none"> 1) Enhanced checks (without barred lists) of Members acting as <ol style="list-style-type: none"> a. Cabinet Members b. Members of the adoption and fostering panels 2) Standards checks for <ol style="list-style-type: none"> a. Members of the Education and Youth Overview and Scrutiny Committee; and b. Members of the Social and Health Overview and Scrutiny Committee. 3) basic checks in respect of all other Councillors.
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REPORT DETAILS

1.00	EXPLAINING THE RULES ON SEEKING DISCLOSURE
1.01	<p>Checking whether a person has any previous convictions is undertaken by asking for a check from the Disclosure and Barring Service (DBS), which is a government agency that holds records of such convictions.</p> <p>The DBS offers three levels of check: -</p> <ol style="list-style-type: none">1) basic - a basic check will contain details of convictions and conditional cautions considered to be 'unspent' under the terms of the Rehabilitation of Offenders Act 1974.("ROA"). The length of time before a conviction becomes spent increases with the seriousness of the offence and some are never spent (e.g. conviction for murder)2) standard - a standard disclosure checks the PNC for any:<ol style="list-style-type: none">a. Cautionb. Convictionsc. Reprimands and warnings (now replaced by youth cautions) <p>For each recorded offence, the report discloses the conviction or caution date, name of the court, nature of the offence, date of the offence, and the details of the sentence imposed.</p> <ol style="list-style-type: none">3) enhanced - the highest level of check available, therefore, it goes into the most level of detail. It reveals if a person has any spent or unspent convictions, warnings, cautions or reprimands on their criminal record. This check also has the option to search the Children or Adult Barred List, though that is not proposed. The applicant's local police force can also disclose other relevant information they hold on the applicant.
1.02	<p>The Council recognises that access to criminal record information must strike a balance between the rights of children and the vulnerable in society, an individual's right to privacy, and the rights of ex-offenders to become rehabilitated into society. It is essential that confidential and sensitive information about an individual's criminal record is handled fairly and properly.</p>
1.03	<p>Searching a person's criminal record is an intrusion into their privacy. This is justified in certain cases and the circumstances in which the Disclosure and Barring Service can/will undertake a search are laid down in legislation.</p>
1.04	<p>Basic DBS checks are available for all types of employment and voluntary positions. They are of limited value because 'spent' offences will not be disclosed nor will any additional police information. Eligibility for the other types of DBS checks is governed by legislation.</p>
1.05	<p>However, there is an Exemptions Order that contains a list of professions, offices, employment, and occupations that are exempted from the ROA</p>

	provided that obtaining the information is for the purpose of assessing the applicant's suitability for a specified occupation, office or profession.
1.06	<p>So long as a job roles / occupations are listed, a standard DBS can be obtained. A Councillor per se is not a listed officer holder; however, the Exceptions Order includes-</p> <ul style="list-style-type: none"> • Any work which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and • Any work which is regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006
1.07	<p><u>The Safeguarding Vulnerable Groups Act 2006</u></p> <p>The answer to the question of whether the Council can legitimately carry out criminal records checks for Members therefore still lies in the version of the Safeguarding Vulnerable Groups Act 2006.</p> <p>The relevant part of the Safeguarding Vulnerable Groups Act 2006 provided that a member of a relevant local government body would be carrying out a regulated activity if the person is</p> <p>(relating to children)</p> <ul style="list-style-type: none"> • a member of a local authority and discharges any education functions, or social services functions, of a local authority; • a member of an executive of a local authority which discharges any such functions; • a member of a Committee of an executive of a local authority which discharges any such functions; • a member of an area Committee, or any other Committee, of a local authority which discharges any such functions. <p>(relating to adults)</p> <ul style="list-style-type: none"> • a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to vulnerable adults; • a member of an executive of a local authority which discharges any such functions; • a member of a Committee of an executive of a local authority which discharges any such functions; • a member of an area Committee, or any other Committee, of a local authority which discharges any such functions.
1.08	<p>Differing levels of information are provided to members fulfilling different roles based on their role/the decisions they must make. Far greater detail is provided to Cabinet Members and those assessing adoption or fostering arrangements. It is appropriate that Councillors who undertake these roles are subject to the highest level of check i.e., enhanced.</p> <p>Though they are not actual decision makers, Scrutiny Members receive information about vulnerable groups, sometimes that can be sensitive, and it might well include descriptions of safeguarding processes. Arguably, they are therefore part of discharging the Council's functions.</p>

	<p>Reputationally it would be a major risk for the Council if it were to be discovered that such information had been given to someone who had taken advantage of a vulnerable person. Standard checks would therefore seem appropriate for this group of Councillors.</p> <p>Basic checks can be undertaken in respect of any Councillor and so should be sought in respect of any Councillor not within the other 2 categories.</p>
1.09	<p><u>The Protection of Freedoms Act 2012</u></p> <p>Prior to the Protection of Freedoms Act 2012, a member of a relevant local government body carrying out specified functions was defined as a regulated activity under the Safeguarding Vulnerable Groups Act 2006. That is no longer the case. Therefore, the effect of this is that there are unlikely be any circumstances where it would be appropriate to conduct an enhanced DBS with a barred list check for elected Members.</p>
10	<p>Assuming that Councillors would wish to obtain the highest level of disclosure, the policy should be that the Council will seek</p> <p>4) standard checks of members as follows</p> <ol style="list-style-type: none"> a. Cabinet Members b. Members of the Education and Youth Overview and Scrutiny Committee; and c. Members of the Social and Health Overview and Scrutiny Committee. <p>5) basic checks in respect of all other Councillors</p>
	<p><u>Results of the Checks</u></p>
1.11	<p>The Chief Officer Governance will hold all disclosed information relating to Members and may intervene and influence Members involvement on all committees and the responsibilities that they discharge. If disclosure reveals that a Councillor has criminal convictions which:-</p> <ul style="list-style-type: none"> • make them unsuitable to serve on the Cabinet or Social & Health Overview and Scrutiny Committee or Education & Youth Overview and Scrutiny Committee – these would be convictions for offences of a sexual nature. The Monitoring officer will tell the Leader or relevant Group Leader and ask for that individual to be replaced. It is then the responsibility of the Leader or Group Leader to nominate another Councillor; or • make them ineligible to have stood as a Councillor (anyone sentenced to more than three months in prison is disqualified from being a Councillor). The Monitoring Officer will advise the Group Leader and Returning Officer that the seat will need to be vacated and a by election held. It is also a criminal offence and a breach of the Councillor’s Code of Conduct to stand for election when disqualified so the Police and Ombudsman will also need to be notified; or • are not relevant to their role as a Councillor and pre-date their election. Such convictions will remain confidential, and no further action will be taken.

2.00	RESOURCE IMPLICATIONS
2.01	<p>Basic and standard DBS checks are £18 per check (person).</p> <p>Enhanced DBS checks are £38 each (per person).</p> <p>The money exists within budget for these checks.</p> <p>Re-checks are required to be undertaken every four years.</p>

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	Group Leaders have been consulted.

4.00	RISK MANAGEMENT
4.01	<p>The recommendations within this report balance a number of competing risks:</p> <ol style="list-style-type: none"> 1) safeguarding – vulnerable children and adults must be protected; 2) reputation – it would damage the Council’s reputation if someone with conviction for sexual offences held a position on Cabinet or either of the named Overview and Scrutiny Committees; 3) privacy – everyone has the legal right to privacy and to be rehabilitated in accordance with the ROA. <p>The legislation sets a clear boundary on what information we are able to obtain thereby minimising the risk of over obtaining data to which we are not entitled in breach of risk 3. We could obtain less if we wished but that would then increase risks 1 and 2 above.</p>

5.00	APPENDICES
5.01	None

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>None</p> <p>Contact Officer: Gareth Owens, Chief Officer Governance Telephone: 01352 702344 E-mail: Gareth.legal@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	None.

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