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**Report of Corporate Management Team**

**Joint Report of John Hewitt, Corporate Director of Resources and  
Lorraine O'Donnell, Director of Transformation and Partnerships**

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**Purpose of the Report**

- 1 To advise Council on the review of DBS checking processes for elected members and to present a new policy framework on DBS checks for Council agreement.

**Background**

- 2 DBS checks provide information about a person's criminal record history at the point at which the check is made. The Council has adopted a policy of routinely re-checking eligible staff every five years.
- 3 At present, checks on Members are requested on an individual basis by Schools and / or individual services dependent on whether the Member performed specific tasks (e.g. School Governorship duties / attendance on Corporate Parenting Panels etc.).

**Application of DBS Eligibility Criteria for Elected Members**

- 4 The Casey report, produced following the child exploitation investigations at Rotherham Metropolitan Borough Council in 2015, drew renewed attention to the issue of Elected Members and DBS checks.
- 5 Consideration of the implications of the Casey report for Durham identified that although the Council generally had strong arrangements in place, there were some areas for improvement or further work, including DBS checks for Members.
- 6 The evaluation highlighted that Elected Members had not been DBS checked consistently and systematically despite being eligible for discretionary enhanced level checks (without a check of the Barred List) due to their leadership role in the local community and a position of trust, with potential access to vulnerable children and adults.
- 7 Under Section 80(1)(d) of the Local Government Act 1972, persons standing for election are required to declare relevant convictions prior to election and it is an offence to provide false information. An Enhanced DBS check will identify details of all spent and unspent convictions, cautions, reprimands and final warnings held on central police files. It may also reference any additional information held on local police records that is reasonably considered relevant to the role in question. It will not however include a check of the DBS barred

lists, which identifies individuals who are prohibited from working with children or vulnerable adults.

- 8 Constitution Working Group on 11 January 2017, and Council on 22 February 2017, agreed that officers should develop a policy framework in respect of DBS checks on Members for consideration and approval. A draft policy, prepared by officers based on the policy for employees, was considered by the Constitution Working Group on 7 July 2017. The group suggested some minor amendments to the draft policy and confirmed that it should be recommended to Council for adoption.

### **DBS Policy for Elected Members**

- 9 A full DBS Policy has been developed (see appendix two), setting out the principles, rationale and logistics for DBS checking of elected members. Importantly this identifies responsibilities for the risk assessment of DBS disclosure information received.
- 10 The policy would be implemented following Council endorsement of it and in this first year, DBS checks would be required within 14 days of the Council meeting, with subsequent checks being undertaken within 14 days of any future elections.
- 11 Should the policy be agreed, notwithstanding that some members may have current valid enhanced level checks (i.e. have had a DBS check within last 5-years), it would be prudent to undertake renewed DBS checks of all Members that have not had one subsequent to the recent local elections.

### **Recommendations and reasons**

- 12 It is recommended that:
- (a) the draft Policy for DBS checking of Members (see draft attached for consideration in Appendix 2) is approved;
  - (b) subject to agreement of the policy, DBS checks are undertaken for all elected Members (without a current check post the election).

### **Background Documents**

Report to CWG 07 July 2017 - Elected Member Disclosure and Barring Service (DBS) Checks

Report to CWG 11 January 2017 – Elected Member Disclosure and Barring Service (DBS) Checks

Report to Council 22 February 2017 – Elected Member Disclosure and Barring Service (DBS) Checks

Casey Report into Child Sexual Exploitation 2015

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## **Appendix 1: Implications**

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**Finance** - DBS application costs incurred by the Council @ £52 per check (inclusive of £4 e-bulk charge for uploading / submitting the DBS check electronically).

**Staffing** - All eligible workers are DBS checked in accordance with DBS Code of Practice and Council Policy. This policy doesn't currently extend to a blanket DBS checking of all elected members.

Information shared on a DBS certificate is managed in the strictest of confidence. Human Resources officers are fully trained in the correct handling, use, storage, retention and disposal of disclosures and disclosure information received. The sharing of any disclosure information received is restricted to those identified to risk assess whether the impact of any spent unspent convictions or cautions is detrimental to the post in question. Unlawful disclosure of information contained in a DBS certificate is a criminal offence. It is proposed that any decisions on material contained within a DBS certificate in relation to an Elected Member should be made by the Monitoring Officer in consultation with the Leader of the Council and the relevant Group Leader.

**Risk** - The attached policy seeks to establish a new policy framework on DBS checks for members for agreement, which will ensure that DBS checks are undertaken for all elected members, thereby reducing risk to the Council.

Given the revised definitions of Regulated Activity introduced as a result of the Protection of Freedoms Act, there is no statutory requirement for a criminal records check on Elected Members unless they are undertaking Regulated Activities. However, the Council has a duty of care to service users and the public, and must take reasonable steps to identify foreseeable risks. Elected Members are considered as persons of trust and authority within their local community. Securing DBS checks for Elected Members is a proportionate means of discharging the Council's duty of care

**Equality and Diversity / Public Sector Equality Duty** – The attached Policy has no detrimental impact on any of the protected characteristics covered by the Councils Equality and Diversity / Public Sector Equality Duties and responsibilities.

**Accommodation** - None

**Crime and Disorder** - The attached policy seeks to establish a new policy framework on DBS checks for members for agreement by CWG, which will ensure that DBS checks are undertaken for all elected members.

**Human Rights** - None

**Consultation** – The proposals set out in this report follow on from discussions held between the Head of Legal & Democratic Services, Resources and Head of Strategy, Transformation and Partnerships and discussions previously held at CWG. The policy framework developed for consideration follows on from the report considered by Council on 22 February, 2017.

**Procurement** - None

**Disability Issues** - None

**Legal Implications** – Under Section 80(1)(d) of the Local Government Act 1972, persons standing for election are required to declare relevant convictions prior to election and it is an offence to provide false information. There is however no obligation to disclose matters considered to be “spent” under the Rehabilitation of Offenders Acts.

An Enhanced DBS check will identify details of all spent, unspent convictions, cautions, reprimands and final warnings held on central police files. It may also reference any additional information held on local police records that is reasonably considered relevant to the role in question. It will not however include a check of the DBS barred lists, which identifies individuals who are prohibited from working with children or vulnerable adults. The policy sets out how adverse information will be addressed.

The Disclosure and Barring Service has confirmed that whilst the role of ‘Elected Member’ does not meet the definition of Regulated Activity (and therefore does not qualify for an Enhanced DBS check with a check of the barred lists), a discretionary Enhanced DBS check (without a check of the barred list) could be undertaken given their responsibility for discharging educational functions and / or social services functions on behalf of the local authority. The barred list is most relevant to employees as it covers concerns raised by professional regulators.

Human Resources



and Barring checks for Elected

# 1.0 Introduction and Background



## 1.1 Background to the Disclosure Barring Service (DBS)

As a Regulated Activities Provider (RAP) the Council has a legal duty to carry out Disclosure and Barring Checks (DBS) to ensure that people who pose a threat are not allowed to work (paid or unpaid) in positions where they can exploit vulnerable groups, including children.

## 1.2 DBS Checks

The type of DBS disclosure that is required is determined by way of a risk assessment of the activity that the individual will be undertaking.

The DBS states that all reasonable endeavours must be made to ensure that each individual application submitted is eligible for a DBS check. The Council maintains confidential records on its HR system (Resourcelink) of each DBS check that has been processed, including the level of check associated with each role.

The Disclosure and Barring Service may return any application form that does not meet the eligibility criteria. Repeated breaches of the DBS eligibility criteria could result in the DBS withdrawing the Councils authorisation to submit DBS applications altogether.

## 1.3 Levels of Disclosure

There are six types of check available.

Level of Check	When to be used	What is checked
Enhanced check for regulated activity (children)	When someone is undertaking regulated activity relating to children (see Appendix 1)	<ul style="list-style-type: none"><li>• The police national computer</li><li>• Police Information</li><li>• The Children's barred list</li></ul>
Enhanced check for regulated activity (adults)	When someone is undertaking regulated activity relating to adults (see Appendix 1)	<ul style="list-style-type: none"><li>• The police national computer</li><li>• Police Information</li><li>• The Adults barred list</li></ul>
Enhanced check for regulated activity (children and adults)	When someone is undertaking regulated activity relating to both children and adults (see Appendix 1)	<ul style="list-style-type: none"><li>• The police national computer</li><li>• Police information</li><li>• The Children's and Adults barred list</li></ul>
Enhanced DBS check (without check of the Barred List)	Where someone meets the pre-September 2012 definition of regulated activity (see Appendix 1)	<ul style="list-style-type: none"><li>• The Police national computer</li><li>• Police information</li></ul>
Standard DBS check	People entering certain professions such as members of the legal and accountancy professions	<ul style="list-style-type: none"><li>• The Police national computer</li></ul>
Basic DBS Check (DBS Scotland)	Applicants who access information in line with the Baseline Personnel Security Standard (BPSS)	<ul style="list-style-type: none"><li>• Unspent criminal convictions only</li></ul>

It is proposed that all elected members are subject to an Enhanced DBS check (without check of the Barred List).

## **2.0 Application of DBS eligibility criteria for Elected Members**

The Police Act 1997 (Criminal Records) Regulations 2002 set out the circumstances in which a request for an enhanced disclosure and barring service check may be made. They include considering the applicant's suitability to engage in 'regulated activity relating to children' and considering the applicant's suitability to exercise defined functions relating to vulnerable adults.

The Disclosure and Barring Service have confirmed that a discretionary Enhanced DBS check (without check of the barred list) can be undertaken linked to Elected Member responsibility in discharging educational functions and/or social services functions on behalf of the local authority.

Under Section 80(1)(d) of the Local Government Act 1972, persons standing for election are required to declare relevant convictions prior to election and it is an offence to provide false information.

**Important Note: The Council will not accept a DBS disclosure certificate that has been provided by another organisation due to the risk factors involved. The only exception would be where the individual has signed up to the DBS Update Service (please contact the HR Operations & Data Team for more information on the DBS Update Service).**

## **3.0 Frequency of DBS checks**

All Elected Members will be required to apply for a DBS check within 14 days of their initial appointment. As good practice the Council will conduct appropriate checks at least every five years whilst the individual remains in their position.

A Member who refuses or fails to apply for a DBS check within 14 days of their appointment to a function will be ineligible to continue in their elected member capacity.

If a Member applies for a DBS check and provides the correct documentation to support an application, but for any reason DBS does not process the application or the application is delayed, the Member will be able to continue in their role until the DBS check is received. Likewise, if the Member is already in situ, they will be able to continue in their existing capacity until which time they receive a completed check.

## **4.0 Risk assessment of disclosures information**

If an Elected Member's completed DBS check highlights any disclosure information then a risk assessment will be undertaken; pending which the Elected Member would be unable to fulfil the functions for which a DBS check is required with immediate effect. The risk assessment process would be carried out by the Council's Monitoring Officer, with appropriate advice received from HR colleagues, in consultation with the Leader of the Council and the relevant Group Leader.

Disclosure information may not prohibit a person from continuing to undertake their official Elected Member functions. However, since October 2009 it has been a criminal offence to knowingly appoint individuals who are 'barred' to roles which involve regulated activity.

Consideration must be given to the following factors:

- how relevant the offence is to the position undertaken;
  - the nature of the person's duties and whether the conviction may undermine the Council's trust in the person performing or continuing to perform those duties.
  - the seriousness of the offence or matter revealed and its relevance to the safety of other employees, customers, clients or property;
- age of applicant at the time of committing the offence;
- the applicant's subsequent record and length of time since the offence occurred;
- whether the offence was a one off, a pattern or part of a history of offending;
- whether the applicant's circumstances have changed since the offence was committed making re-offending less likely;
- whether the offence has been decriminalised by Parliament; and
- the degree of remorse, or otherwise, expressed by the individual and their motivation to change.

This list is not exhaustive and the Monitoring Officer must consider the full degree of risk and determine the action required. The details of all DBS checks and the contents of any discussion between the Member and Monitoring Officer, plus Human Resources as appropriate, concerning such checks shall remain strictly confidential.

Risk assessment is required to decide whether the risk of continuing to engage the Elected Member in these functions can be taken and what precautions and safeguards would be needed to manage and minimise that risk. Prior to making any final determination, the Member will be offered the opportunity to comment on the disclosure. Copies of appropriate risk assessment pro-formas can be obtained from the HR Operations & Data Team.

## **5.0 Processing an application form for disclosure**

The Council uses an e-bulk facility for the upload and processing of DBS checks. Applications are completed, verified and countersigned online. Anyone who requires a check will be issued further instruction in writing along with a log-in/password.

An ID checker has been assigned within Members Support to verify original documentation.

A record of the DBS check (and date undertaken) will be recorded centrally and will inform re-checking protocols.

## 6.0 Further information

Detailed guidance and information on DBS checks, the risk assessment of disclosure information and the processing of DBS application through e-bulk is available from the HR Operations & Data Team: [DBS@Durham.gov.uk](mailto:DBS@Durham.gov.uk) or by telephoning Angela Nicholson, HR Officer 03000267250

If you have any specific queries regarding the progression of an individual application, please contact the HR Operations and Data Team, Resources, Green Lane Council Offices, Level 0, Spennymoor, County Durham DL16 6JQ or via email to [hresources@durham.gov.uk](mailto:hresources@durham.gov.uk)

If you would like any further advice or would like the document in an alternative format, please contact the HR Advice and Support Team using the contact details below:

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