

DISCLOSURE AND BARRING SERVICE CHECKS FOR ELECTED MEMBERS

Report of the Assistant Director for Legal & Democratic Governance

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1 The report details a proposal for the Council to undertake enhanced Disclosure and Barring Service (DBS) checks for elected members undertaking specified duties.

2. BACKGROUND

- 2.1 On 18 January 2024, all upper tier and unitary local authorities received a letter from Simon Hoare MP (Minister for Local Government) informing councils of the outcome of an independent review commissioned by the Home Office in relation to the Disclosure and Barring Regime, and specifically highlighting one of the recommendations of that review that:-

“...an enhanced criminal record check is made mandatory for all councillors....who are being considered for appointment to any committee involved in decisions on the provision of children’s services or services for vulnerable adults.”

- 2.2 While it is noted that legislation would be required for such checks to be made mandatory, the Department for Levelling Up, Housing & Communities (DLUHC) has now formally requested that all unitary and upper tier authorities (including Stockport) put in place enhanced DBS checks as best practice for those councillors considered for appointments to such committees.
- 2.3 A copy of this letter is included at Appendix 1 to the report.

3. DISCLOSURE AND BARRING CHECKS

- 3.1 There are four types of DBS check, and each type results in a DBS certificate being issued to an individual.

The four levels of DBS check are:-

- Basic DBS check
- Standard DBS check
- Enhanced DBS check
- Enhanced with Barred List(s) DBS check

- 3.2 While it is noted that Section 80 of the Local Government Act 1972 already provides some safeguards by disqualifying individuals from standing for election or holding office if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months’ imprisonment (including a suspended

sentence), the recommendation from DLUHC is that members undertaking specified duties are subject of an enhanced DBS check.

- 3.3 An enhanced DBS Check includes information regarding any spent, and unspent, convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering. The certificate may also contain non-conviction information supplied by relevant police forces, if it is deemed relevant and ought to be contained in the certificate.

4. LOCAL IMPLEMENTATION

- 4.1 It is noted that the scope of the recommendation relates to those members that are appointed to any committee which discharges education or social services functions. At Stockport, it is considered that appointments to the following bodies would consequently require an enhanced DBS check:-

- All members of the Cabinet
- All members and co-opted members of the Children & Families Scrutiny Committee
- All members and co-opted members of the Adult Social Care & Health Scrutiny Committee
- All members of the Corporate Parenting Working Party
- All members of the Adoption Panel
- All members of the Fostering Panel

- 4.2 It is proposed that DBS checks are to be carried out as soon as reasonably practicable after the appointment of a member to one of the above bodies.

- 4.3 If a conviction, or any other information of concern, is revealed by the disclosure check, the circumstances of each member must be judged on its individual merits, having regard to the nature of the conviction revealed or information or concern shared. In each case, the Chief Executive, advised by the Monitoring Officer, may raise the matter with the relevant Group Leader to determine the appropriate course of action.

- 4.4 It is further proposed that this policy should come into effect from the commencement of the 2024/25 municipal year.

5. CORPORATE, RESOURCE MANAGEMENT & GOVERNANCE SCRUTINY COMMITTEE

- 5.1 The report was discussed at the meeting of the Corporate, Resource Management & Governance Scrutiny Committee on 27 February 2024 during which the following comments were made:-

- It was commented that only those members who held a regulated position would be the subject of an enhanced DBS check. It was suggested that other members should be given the opportunity to 'opt-in' to have a DBS check undertaken notwithstanding their status as holders of a regulated position.
- It was suggested that consideration should be given to requiring all members to undertake a DBS check.

- 5.2 In response to these points, while it is noted that requiring all members to have a DBS check or alternatively, operating an 'opt-in' system, would provide the council with additional flexibility, particularly when attempting to secure substitute members to sit on one of those committees, the DBS regime is highly regulated with eligibility requirements attached to each type of check. Specifically, the role of councillor itself was not one that could lawfully be subjected to an enhanced DBS check.
- 5.3 While it was possible that councillors in non-regulated roles could have a basic DBS check, doing so would incur costs to the council, but still not satisfy the recommendation that members sitting on those regulated committees as substitutes hold an enhanced DBS check.
- 5.4 Under the proposals contained in the report, it is noted that up to two-thirds of members would need to have an enhanced DBS check and it is considered that this would be sufficient to provide adequate capacity to operate robust substitute arrangements. However, this will be kept under review during the first 12 months of operation.

6. FINANCIAL CONSIDERATIONS

- 6.1 An enhanced DBS check currently costs £38. It is anticipated that the proposed policy would require checks on 40 posts to be undertaken. There is therefore a potential additional cost of up to £1,520 that would need to be met from within the existing Members' Services Budget, although the actual final figure is likely to be less as members may be appointed to more than one eligible post.
- 6.2 While a DBS check does not expire, it is proposed that checks are to be renewed on a four-year basis to ensure that these remain relevant and provide the council with sufficient assurance as to a members' suitability for appointment to a relevant committee.

7. LEGAL CONSIDERATIONS

- 6.1 The position of Councillor is not in itself a position named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Therefore, there is no eligibility for a DBS certificate at a Standard or Enhanced level, solely on the basis of being a Councillor, they must be carrying out further activities prescribed in legislation.
- 6.2 A Councillor is only eligible for an enhanced DBS certificate without DBS barred list checks if they meet the specific legislative criteria from the Safeguarding Vulnerable Groups Act 2006 set out below:-

A person is a member of a relevant local government body if –

- (i) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority;
- (ii) he is a member of an executive of a local authority which discharges any such functions;
- (iii) he is a member of a committee of an executive of a local authority which discharges such functions;

- (iv) he is a member of an area committee, or any other committee, of a local authority which discharges such functions.

6.3 The proposed arrangements for the undertaking of DBS checks in Stockport fully accords with the legislative requirements outlined above.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 The Cabinet is recommended to give approval to the proposals detailed in Section 4 of the report for the undertaking of enhanced DBS checks for elected members.

BACKGROUND PAPERS

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Damian Eaton on 0161 474 3207 or by email on damian.eaton@stockport.gov.uk