

Division(s): N/A

COUNCIL - 10 SEPTEMBER 2013

CRIMINAL RECORDS CHECKS FOR COUNCILLORS

Report by County Solicitor & Head of Law and Culture

Introduction

1. The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This had the effect of significantly reducing the number of positions and circumstances in which persons would need to be the subject of a criminal records check. This has significance for County Councillors. Prior to the change in legislation on 10 September 2012, it had been the Council's policy that all County Councillors should undergo a criminal records check following their election unless they had had such a check in the 12 months prior to their election.
2. Changes to the legislation now mean that there is no legal requirement for any councillor to undergo such checking by virtue only of their position as an elected member. This therefore becomes a policy matter for determination by the Council itself. This report therefore sets out the current legal position and invites the Council formally to decide its policy on criminal records checks for councillors and to determine which (if any) posts should be the subject of a check.

Changes to the CRB regime – the current position

3. The Protection of Freedoms Act 2012 abolished the former arrangements for the vetting and barring of individuals from working with children and vulnerable adults. The Criminal Records Bureau and the Independent Safeguarding Authority were merged to form a new body, the Disclosure and Barring Service (DBS). Criminal Records Bureau checks are now therefore called "DBS checks".
4. The Safeguarding Vulnerable Groups Act 2006 has effectively been amended to scale back the number and type of positions/circumstances which should be subject to criminal records checking. The provisions now only relate to those persons who have close and unsupervised contact with vulnerable groups including children. There are specific definitions as to what this means in practice.
5. The definition of "regulated activity" under the Safeguarding Vulnerable Groups Act has been amended. Previously, the definition specifically included councillors who "discharged functions" relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This was understood to include all members of Cabinet, relevant scrutiny members and

those serving on fostering and adoption panels. This definition has been formally repealed. No county councillors are now legally required to undergo a criminal records check as part of assessing their suitability for such roles; this is with the exception of councillors who will be involved in Fostering and Adoption panels where criminal checks, including barred list checks, should still be completed.

6. The definition of “regulated activity” under the Safeguarding Vulnerable Groups Act now only means:

With regard to children:

Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children – if done regularly; and relevant personal care (even if only done once); registered child-minding and foster carers.

With regard to adults:

Healthcare professionals providing healthcare or personal care; the provision of social work by social care workers; assistance with cash, bills or shopping or the conduct of their personal affairs; conveying persons because of their age, illness or disability even if only done once.

7. These definitions are given in more detail in the legislation but it is clear that the emphasis now is on the provision of close personal care and involvement with the individual.
8. Given this definition, there is now no legal requirement for a criminal records check on councillors unless it is considered that a person is undertaking any of the activities listed in paragraph 6 or will serve on fostering and adoption panels.

Discretion

9. While the statutory requirement for automatic councillor checks has been lifted, some discretion has been left to councils to continue previous arrangements if they wish. The Rehabilitation of Offenders Act regulations have been amended to allow enhanced checks on individuals who were previously covered by the definitions of regulated activity for children and vulnerable adults that were applicable prior to 10 September 2012.
10. This means that the Council may still carry out enhanced checks on any councillors occupying positions which it deems to be “discharging” social services and education functions. The Council can construe this as meaning ‘all members’ on the basis that they may potentially be members or substitutes of such committees or become members of the Cabinet. The DBS advise that councillors in their general constituency capacity are not eligible for a records check.

Council Policy

11. Previously the Council's policy was to undertake a criminal records check for all councillors and not just those who 'discharged' education and social care functions. This was considered to create public confidence in situations where elected members might visit care homes, schools, clubs or other settings where they might have unsupervised access to vulnerable groups including adults.
12. It is now appropriate for this policy to be reconsidered in light of the changes outlined above. A decision is required as to whether to scale back the Council's current checking policy or to retain the current approach of checking all members but only on the basis of that all members may be asked to serve or substitute on a committee discharging education or social care responsibilities.
13. In adopting a new approach, the Council may wish to consider the following options or a combination of them:
 - a) No checking: Decide not to undertake criminal records checking, even where enhanced checks are permitted, on the basis that the law has been deliberately changed to remove this statutory requirement (with the exception of members of Fostering and Adoption Panels, which should continue).
 - b) Targeted checking: Identify the specific councillor positions which 'discharge' social services and education functions and ask that such post holders undergo criminal records checking against the criteria applicable before 10 September 2012.
 - c) Retain a policy of checking all councillors on the basis that all members have the potential to serve or be substitutes on a committee discharging education or social care functions, or may become Cabinet members.
14. If the Council is minded to identify only certain positions which 'discharge' social and education functions, this might be said to include:
 - All members of Cabinet – who collectively take decisions that directly impact on services for children and vulnerable adults
 - Chairmen and deputy chairmen of Scrutiny Committees – by their nature, these will be scrutinising decisions and issues impacting upon children and vulnerable adults
 - Fostering and adoption panel members – who make decisions which impact directly on children and who should be checked as a matter of course.
15. The cost of a CRB enhanced check is £55. For 63 councillors this would be £3,465.

Conclusion

16. While this report has set out the various options to consider, Council may find it useful to know that the Monitoring Officer has also raised the matter with the two Independent Persons, within the Council's standards arrangements, for their view. Group leaders have similarly been consulted. The recommendation of the Monitoring Officer, based on these considerations, and supported by the persons mentioned, is that checking should continue for all councillors on the basis of paragraph 13(c) above. It is also noteworthy that in December 2011, prior to the legislative changes (and prior to its own dissolution) the Standards Committee supported the continuation of criminal records checking for all councillors. This was on the basis that such checking strengthened the governance of the Council and public confidence in its elected members.

RECOMMENDATIONS

17. **Council is RECOMMENDED to:**

- (a) **note that criminal records checks should continue to be made in any case for members of Fostering and Adoption Panels;**
- (b) **agree the approach for criminal record checking for Councillors having regard both to the options at paragraph 13 and the Monitoring Officer's comments at paragraph 16 to the report.**

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Background papers: none

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