

HAMPSHIRE COUNTY COUNCIL

Report

Committee/Panel:	Audit Committee
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Title:	DBS Checks for Elected Members
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Report From:	Chief Executive

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1. Summary

- 1.1. The purpose of this paper is to set out the current legal position regarding Disclosure and Barring Service (“DBS”) checks for elected members, together with a summary of the approach that has been taken to date within the County Council.
- 1.2. The report also contains recommendations for formalising the existing approach into a new County Council policy on DBS checks for elected members and for this policy to be adopted by Audit Committee as part of the Corporate Governance Framework.
- 1.3. The proposed policy is attached at Appendix 1.

2. Contextual information

- 2.1. Under Section 80 of the Local Government Act 1972, a candidate is not allowed to stand for election to local government if they are “disqualified”. A candidate is disqualified if, during the previous 5 years, s/he has been convicted in the UK, Channel Islands or Isle of Man of any offence and has had a sentence passed of imprisonment (suspended or not) for not less than 3 months and without the option of a fine.
- 2.2. Candidates for election are required to sign a declaration confirming they are not disqualified. However, no check is made to verify whether this declaration is accurate. In the circumstances, this does not represent a robust check on elected members’ previous convictions for the purposes of safeguarding children and vulnerable adults. It also does not provide assurance regarding any historical concerns.

2.3. From 2013, the new Disclosure and Barring Service (“DBS”) replaced the previous Criminal Records Bureau system. The DBS is a government agency that undertakes criminal record checks of applicants for certain roles. The County Council has very wide statutory Children’s and Adult safeguarding responsibilities and therefore undertakes substantial numbers of DBS checks on staff and volunteers. Before asking a person to apply for a DBS check the County Council must be satisfied that it is entitled to submit an application. This means ensuring the position to which the individual is seeking appointment is eligible for a check under the relevant legislation.

2.4. The different types of checks and eligibility criteria are:

- (a) Basic disclosure: Any individual can apply for a basic disclosure on payment of a fee. A basic certificate will only provide details of unspent convictions. There are no eligibility requirements and anyone can apply.
- (b) Standard Check: To be eligible, the position the individual is seeking appointment to must be included in the Rehabilitation of Offenders Order 1974 (Exceptions) Order 1975 (as amended). A standard certificate will include details of spent and unspent convictions, cautions, reprimands and final warnings.
- (c) Enhanced Check: To be eligible, the position must be included in both the 1975 Order **and** the Police Act 1997 (Criminal Records) Regulations 2002. An enhanced certificate includes the same information as the standard check, plus any additional information held by local police that is reasonably considered relevant to the role being applied for
- (d) Enhanced Check with check of Barred Lists: To be eligible the position must be eligible for an Enhanced Check **and** be a role which can be checked against the barred list under the Safeguarding of Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012. This provides the same information as an Enhanced Check, and also confirms whether the individual’s name appears on the “barred lists”.

2.5. Elected members are not required to undergo a DBS check by virtue of their role as an elected member generally. However, Members who hold certain executive roles, or who are members of committees that have responsibility for discharging social care or education functions, **are** eligible for standard and enhanced DBS checks (but not checks against the barred lists).

Therefore, as a minimum:

- the Executive Members for Children’s and Adult Services and Public Health; and
- Cabinet Members generally; and
- Members and deputies on various committees with responsibility for social care or education functions

are all eligible for standard and enhanced DBS checks. Due to the County Council's statutory safeguarding duties and commitment to responsible safeguarding at all levels, it is very important that members who might fall into the above list are subject to appropriate DBS checks.

- 2.6. The above list will not necessarily include all Members at the start of an electoral cycle. However, all members may at some point during an electoral cycle be appointed to any portfolio, committee or role. (Since the last elections approximately 85% of members have at one time or another held a role or served on a relevant committee that exercises social care or education functions). Therefore, a case can legitimately be made to ask all members to undergo an enhanced DBS check upon election. This would avoid administrative or other problems associated with requiring members to undergo checks during the election cycle, if and when they are appointed to a particular role or committee. It would also make a very clear and transparent statement about the County Council's commitment to safeguarding.

3. The approach to Member DBS checks in the County Council to date

- 3.1. The County Council has never had a formal policy on DBS checks for Members and it is not a constitutional requirement to have one. Prior to the 2009 local elections, the Leader of the Council and the Leader of the opposition agreed that all Members should have enhanced "CRB" checks (as they were called at this time) following the elections. This was notified to Members prior to the elections and it was made clear that the information obtained would be strictly managed.
- 3.2. By the 2013 elections, the law relating to CRB checks had changed and the new DBS process had come into force. This included greater restrictions on who could be subject to DBS checking. A decision was taken in 2013 to seek enhanced DBS checks for all Members following the 2013 elections. Due to the very sensitive nature of DBS information, a process was developed in which Members were assisted to complete DBS application forms by the Resourcing Centre Manager. Certificates were sent direct to Members by the DBS. Therefore, members were asked to take their certificates to the Chief Executive's PA, who validated the results, recorded the disclosure number and advised the Resourcing Centre that the check had been done. This was a cumbersome and very time consuming process.

4. Proposed Policy

- 4.1. It is now proposed to firm up the previous practice into a clear, transparent and efficient policy, which can be shared with all Members and candidates in advance of the 2017 elections. Under the proposed policy, the County Council will ask all candidates who are successfully elected (including at by-elections) to undergo an enhanced DBS check. It is important to remember that Members cannot be compelled to undergo a DBS check. However, where a Member refuses to undergo a check, then this would be discussed with their Group Leader.

- 4.2. The proposed policy is attached at Appendix 1 and contains very clear safeguards to ensure Members' rights to privacy and information security are properly protected. The policy also makes it clear that a police or related record remains a matter of confidentiality and of course does not necessarily disbar an individual from standing for election or holding a particular role. Establishing the policy properly in advance of local selection processes would be fair to all concerned.
- 4.3. Because the County Council is a "bulk user" of the DBS service, it is able to undertake an online checking process, which is quick and efficient. It is proposed that the online checking process would be used for Member DBS checks. The process will involve each Member providing evidence of their identity and certain other information to a senior Democratic and Member Services ("DaMS") officer who will assist with completing, countersigning and submitting the online application form. The DBS certificate itself will be sent to each Member. If the check is "clear", then the Monitoring Officer will receive a notification by email from the DBS, together with a DBS certificate number, which will be added to Members' SAP records, indicating that a check has been done. (NB the SAP record will not show the outcome of the check, only that it has been carried out).
- 4.4. If the check discloses convictions or other relevant information, then the Member will be asked to produce their certificate to the Monitoring Officer and the Chief Executive only. The Monitoring Officer, in consultation with the Chief Executive will consider whether the disclosure could affect the Member's ability to perform particular roles. If they do consider the disclosure to be material, the Chief Executive and Monitoring Officer will invite the Member to disclose the DBS certificate to their Group Leader for further discussion about the impact of the disclosure on their ability to undertake certain roles and appropriate safeguards that could be put in place.
- 4.5. The Member's SAP record will be amended to show that a check has been carried out. The results of the check **would not** be recorded in SAP – only the fact that a check has been made, and the certificate number would be recorded, in exactly the same way as a clear check would be recorded. It will not therefore be possible to tell from a SAP record whether a Member's DBS check was clear or showed any convictions.
- 4.6. If a Member refuses to undergo a DBS check, then the Member would be invited to discuss this with their Group Leader. In this case their SAP record will show that no DBS check has been undertaken.
- 4.7. The process proposed above mirrors the process used for appointment of employees and volunteers. It would be administered by senior DaMs officers and strict controls would be placed over information received to ensure that Members' rights to confidentiality, privacy and information security are maintained.

- 4.8. If the policy is adopted, it will be publicised to potential candidates prior to the 2017 elections so that all Members and potential Members are aware.

5. Finance

- 5.1. The cost of an Enhanced DBS check is £40 per application. Therefore the total cost of all 78 elected members undergoing enhanced DBS checks is £3,120.
- 5.2. There will be some resource implications associated with administration of the DBS process, however it is anticipated that this work can be undertaken within existing resources.
- 5.3. The costs are considered to be small when compared to the County Council's safeguarding duties and commitment to and leadership of responsible safeguarding at all levels.

6. Other key issues

- 6.1. Because DBS checks can result in disclosure of extremely sensitive personal information, the proposed policy and process for undertaking Member DBS checks includes measures to safeguard Members' rights to privacy. These include the following:
- The Chief Executive and Monitoring Officer will be the only members of staff who will see a positive disclosure
 - Any records associated with positive disclosures will be stored securely by the Monitoring Officer
 - SAP records will only contain the fact that a DBS check has been conducted and the date it was conducted. Therefore, no details of the results of DBS checks would be recorded in SAP.

7. Consultation and Equalities

- 7.1. The Chief Executive has notified the Leader of the Council and the Leaders of each political group of the proposal to create a formal policy for member DBS checks. All who responded have confirmed that they agree with the principle, albeit noting that elected members cannot be compelled to undergo a DBS check.
- 7.2. There are no equalities impacts of the proposal to firm previous practice up into a policy that will be applied equally to all Members. The proposed approach is also lawful under the Rehabilitation of Offenders Act 1974 and other legislation relating to spent convictions and DBS checks.

8. Recommendations

- 8.1. That Audit Committee approves and adopts the policy for undertaking DBS checks for Members set out at Appendix 1, as part of the Corporate Governance Framework.
- 8.2. That Audit Committee notes the process that will be followed and safeguards that will be put in place, as set out in this report, to protect Members' rights to privacy and security of sensitive personal information.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	Yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
None		
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	
The Rehabilitation of Offenders Act 1974 The Police Act 1997 (Criminal Records) Regulations 2002 The Safeguarding of Vulnerable Groups Act 2006 The Protection of Freedoms Act 2012		

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

- (a) It is considered that the proposals in this paper will have a low or no impact on groups with protected characteristics. The proposed policy complies with the Rehabilitation of Offenders Act 1974 and will be applied equally and fairly to all elected members. It is not proposed that the policy will prevent a member from holding office as a County Councillor. Safeguards regarding sensitive personal information will be put in place to protect elected members' rights to privacy.

2. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption? N/A

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

Draft DBS Policy for Elected Members

Introduction

1. Hampshire County Council takes its responsibilities for safeguarding children, vulnerable adults and other vulnerable groups very seriously. As part of its strategy for discharging its safeguarding obligations, Hampshire County Council has adopted this Policy for undertaking Disclosure and Barring Service (“DBS”) checks on elected members.
2. Elected members hold positions of trust and have wide access to the County Council’s social care and education services. Elected members also perform very important duties in respect of Hampshire County Council’s safeguarding and education functions and in doing so have access to very sensitive information about vulnerable service users.
3. As trusted representatives of their constituents, holding positions of significant trust, Hampshire County Council’s policy is for elected members to undergo appropriate DBS checks as set out below.
4. Hampshire County Council is committed to ensuring that through its operation of this policy it will comply with its obligations in respect of the Rehabilitation of Offenders Act 1974 and other associated legislation.

Different types of DBS Checks

5. The different types of checks are:
 - (a) Basic disclosure: Any individual can apply for a basic disclosure. A basic certificate will provide details of unspent convictions only.
 - (b) Standard Check: A standard certificate will include details of spent and unspent convictions, cautions, reprimands and final warnings.
 - (c) Enhanced Check: An enhanced certificate includes the same information as the standard check, plus any additional information held by local police that is reasonably considered relevant to the role being applied for.
 - (d) Enhanced Check with check of Barred Lists: This provides the same information as an Enhanced Check, and also confirms whether the individual’s name appears on the “barred lists”.

DBS Checks for Elected Members

6. Elected members (and deputies) who hold certain Executive roles, or who are members of committees, panels or other bodies that have responsibility for discharging social care or education functions, are eligible for Standard and

Enhanced DBS checks. However, elected members are not eligible checks against the “barred lists” maintained by the DBS.

7. During an electoral term, nearly all Members will at one time or another perform roles or functions in respect of social care or education and therefore be eligible for both Basic and Enhanced DBS checks. Therefore, Hampshire County Council’s policy is that all elected Members should undertake an Enhanced DBS check, following their election to office.
8. Members will be assisted through the online DBS checking process by officers from the County Council’s Democratic and Member Services Team. Each Member will be asked to consent to their DBS certificate being disclosed to the Chief Executive, the Monitoring Officer and their Group Leader only.
9. Once the DBS check is completed, an email will be sent by the DBS to the Monitoring Officer of the County Council confirming that the check is either complete with no disclosures (negative) or complete with disclosures (positive). A paper copy of the DBS certificate will be sent to the Member by post by the DBS.
10. If the disclosure is negative then the Members’ SAP record will normally be updated with the date of the completed DBS check and the DBS certificate number. No other information about the DBS check and what (if anything) it revealed will be stored on SAP.
11. If the disclosure is positive the Member will be asked by the Monitoring Officer to bring their original paper DBS certificate to the Monitoring Officer’s office. The Monitoring Officer, in consultation with the Chief Executive, will risk assess the disclosure to ensure that the nature of the disclosure is appropriate in light of the Members’ responsibilities and complete a risk assessment form.
12. If a positive disclosure is not deemed to pose a concern, then the disclosure certificate will be filed confidentially by the Monitoring Officer’s office and the Member’s SAP record will be updated with the date and number of the disclosure only. No other information about the DBS check and what (if anything) it revealed will be held in SAP.
13. If a positive disclosure is deemed to pose a risk for the County Council or its residents then, following consideration by the Monitoring Officer, in consultation with the Chief Executive, concerns will be discussed with the Member’s Group Leader, in accordance with the consent form the Member was asked to sign at the outset of the process.
14. If a Member refuses to undergo a DBS check, then they will be invited to discuss this further with their Group Leader.

General Principles and Compliance with Legislation and Relevant Codes of Practice

15. As an organisation assessing elected members' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), Hampshire County Council:

- complies with the [code of practice](#) and undertakes to treat elected members fairly
- undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed
- can only ask an individual to provide details of convictions and cautions that Hampshire County Council is legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended)
- can only ask an individual about convictions and cautions that are not protected
- is committed to the fair treatment of its Members, staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background
- actively promotes equality of opportunity for all with the right mix of talent, skills and potential
- will ensure that an application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary
- ensures that all those in Hampshire County Council who are involved in the process for undertaking DBS checks on elected members have been suitably trained to identify and assess the relevance and circumstances of offences
- will ensure that an open and measured discussion takes place between the Monitoring Officer and individual elected members on the subject of any offences or other matter that might be relevant to the position.
- will make every subject of a criminal record check submitted to DBS aware of the existence of the [code of practice](#) and will make a copy available on request
- undertakes to discuss any matter revealed on a DBS certificate with the individual Member concerned before taking any other action.