

CONSTITUTION AND ETHICS	AGENDA ITEM No. 5
14 JULY 2021	PUBLIC REPORT

Report of:	Fiona McMillan, Corporate Director of Governance	
Cabinet Member(s) responsible:	Councillor Fitzgerald, Leader	
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CRIMINAL RECORD CHECKS FOR MEMBERS AND CO-OPTED MEMBERS
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RECOMMENDATIONS	
FROM: Fiona McMillan, Corporate Director of Governance	Deadline date: For Full Council on 28 th July 2021.
<p>Members of the Constitution and Ethics Committee are asked to:</p> <ul style="list-style-type: none"> • Consider the introduction of Criminal record checks for members and co-opted members; • Determine what if any additional members should be requested to submit to an Enhanced (Without Barred List) Check; and • Subject to agreement of the above, recommend the proposed Member Criminal Records Check Policy at Appendix 1 for approval by Full Council; 	

1. ORIGIN OF REPORT

1.1 This report is submitted to the Constitution and Ethics Committee following a referral from the Monitoring Officer in conjunction with the Assistant Director for Early Help and Children's Services.

2. PURPOSE AND REASON FOR REPORT

2.1 Peterborough City Council maintains a DBS Policy in relation to its employees, volunteers, applicants and others engaged in service provision with children or vulnerable adults including foster carers and adopters. The same provisions do not exist in relation to Members and this Report therefore invites members of the Constitution and Ethics Committee to consider and if agreed, recommend the draft Member Criminal Records Check Policy for approval by Full Council.

2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.2:

Authority to oversee and approve the operation of the Council’s functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:

- Promoting and maintaining high standards of conduct by Members and co-opted members;
- Assisting the Members and co-opted members to observe the Code of Conduct;
- Advising the Council on the adoption or revision of the Members Code of Conduct and Officer Code of Conduct;
- Monitoring the operation of the both Codes of Conduct;
- Advising, training or arranging to train Members and co-opted members on matters relating to the Code of Conduct.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
Date for relevant Council meeting	28.07.2021	Date for submission to Government Dept. <i>(Please specify which Government Dept.)</i>	N/A

4. **BACKGROUND, KEY DEFINITIONS & LEVELS OF DBS CHECK**

4.1 **BACKGROUND**

The Disclosure and Barring Service (DBS) was established under the Protection of Freedoms Act 2012 (“**PFA**”) and provides a procedure through which organisations may carry out a criminal record check (“**DBS Check**”) related to individuals who may, on behalf of the organisation, undertake work or hold positions or responsibilities which could bring them into contact with vulnerable persons. In addition, the DBS is also responsible for investigating safeguarding concerns and maintaining statutory lists containing details of people considered unsuitable to work with children and/or adults (“**Barred Lists**”).

Individuals on a Barred List for children and/or adults cannot undertake certain statutorily prescribed activities (“**Regulated Activities**”) and it is a criminal offence for organisations to allow an individual to do so without first checking their status.

Elections legislation provides some safeguards by barring individuals from standing for election if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months’ imprisonment. However, this in itself is not always considered sufficient and it is therefore open to Councils to determine what if any additional checks may be required provided that they are consistent with recommended practices in this area.

4.2 KEY DEFINITIONS

Regulated Activity is work that a barred person must not do. It is defined in the Safeguarding Vulnerable Groups Act 2006 (“**SVGA**”) which has been amended by the Protection of Freedoms Act 2012 (PFA) and must be considered either in the context of children or adults.

Regulated Activity in relation to Children

Regulated Activity in this context with reference to what activity the person does, how often the person does it and where the work will be carried out and can be summarised as follows:

1. Unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, moderating a web service wholly or mainly for children or driving a vehicle only for children;
2. Work for a limited range of specified establishments with opportunity for contact: for example, schools, children’s homes, childcare premise but not work by supervised volunteers.
3. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
4. Registered child-minding; and foster-carers.

Work under 1 or 2 is Regulated Activity only if done regularly i.e. more than temporary and occasion which is defined to be more than 3 days in a 30-day period or overnight between 2 a.m. and 6 a.m. with the opportunity to for face-to-face contact with children. More detailed information can be found in the DBS Guidance on Regulated Activity with Children in England.

Regulated activity in relation to Adults

Regulated Activity in this context need only occur once and is defined as:

1. Providing health care;
2. Providing personal care (e.g. providing/training/instructing/or offering advice or guidance on physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult’s age, illness or disability; or prompting and supervising an adult to undertake such activities where necessary because of their age, illness or disability);
3. Providing social work;
4. Providing assistance with cash, bills and/or shopping;
5. Providing assistance in the conduct of a person’s own affairs, e.g. by virtue of an enduring power of attorney; vi. Conveying- transporting an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

More detailed information can be found in the DBS Guidance on Regulated Activity with Children in England.

4.3 LEVELS OF DBS CHECK

There are different levels of check that can be undertaken:

- “Basic Disclosure”** This check is available for any individual for any purpose, there are no eligibility criteria. The check provides details of convictions considered unspent.
- “Standard”** Contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with legislation.
- “Enhanced (Without Barred List)”** An enhanced level certificate contains details of all spent and unspent convictions, cautions, reprimands and final held on the PNC which have not been filtered in line with legislation and also includes a check of information held locally by police forces.
- “Enhanced (With Barred List)”** This check contains the same details as an Enhanced DBS Check above but will in addition check against the children’s and/or adult’s barred lists. The barred lists contain details of those who are considered unsuitable to work with children and/or adults. People on the barred lists can’t do certain types of work.

To be eligible to request a check of the children’s or adults’ barred lists, the position must involve the performance of Regulated Activities and be eligible for an enhanced level DBS certificate as above and be specifically included in the Police Act 1997 (Criminal Records) Regulations as able to check the appropriate barred list(s).

5 CRIMINAL RECORDS CHECKS FOR MEMBERS AND CO-OPTED MEMBERS

The level of DBS Check that can be submitted for a Member or Co-Opted Member depends on the role that is being carried out.

A Basic Disclosure

Can be obtained for any person and for any reason (with permission). However, Members or Co-Opted Members are not required to be checked by virtue only of their position.

It has been recommended within the draft Policy that the need for a Basic Disclosure should be assessed on a case by case basis where the Member’s activities do not meet the requirements for a Standard or Enhanced Check but where they for example attend community events, take surgeries or visit local residents in their own home and have access to the general public including children.

A Standard DBS Check

May only be obtained if the position is included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (“**the ROA Exceptions Order**”) which includes regulated activities ‘working with adults or children’.

It has been recommended within the draft Policy that the need for a Standard DBS Check should again be assessed on a case by case basis and dependent upon the activities that are being carried out. Members may request a criminal record check at any time but otherwise the decision as to whether one is required to be completed will be made in consultation with the Monitoring Officer.

An Enhanced (Without Barred List) Check

May only be obtained if the position is included in both the ROA Exceptions (as above) and in the Police Act 1997 (Criminal Records) Regulations 2002 as amended (the “**Police Act Regulations 2002**”).

Work in Relation to Children:

The Police Act Regulations 2002 set out the roles which are eligible for Enhanced DBS Checks. This includes a provision at s.5C(a) which states that they may be obtained in order to consider an:

“applicant’s suitability to engage in any activity which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the SVPA 2006 as it has effect immediately before the coming into force of section 64 of the PFA.”

This includes a person who is a member of a relevant local government body if:

- he is a member of a local authority and discharges any education functions or social services functions of a local authority;
- he is a member of an executive of a local authority which discharges any such functions;
- he is a member of a committee of an executive of a local authority which discharges such functions
- he is a member of an area committee, or any other committee, of a local authority which discharges such functions. This includes a reference to any sub-committee which discharges any such functions.

Work in Relation to Adults:

The Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013 definition of work with adults sets out which roles are eligible and include a provision at 5B(1)(g) which includes the exercise of a function of a person who is:

- a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service or a specified activity within the meaning of paragraph (9) or a specified activity within the meaning of paragraph;
- 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; or
- a member of an area committee.

Having regard to the above it is recommended within the draft Policy that Enhanced (Without Barred List) Checks are carried out in respect of all Members and Co-Opted Members of the

*Corporate Parenting Committee or such other committee as the Monitoring Officer may deem appropriate (“the **Relevant Committees**”).*

Outside the above arrangements checks may be made on a case-by-case basis in consultation with the Monitoring Officer.

An Enhanced (With Barred List) Check

May only be obtained where the role requires the performance of Regulated Activities and where it meets the criteria for an Enhanced (Without Barred List) Check and is specifically listed in the ROA Exceptions Order as permissible. It is therefore acknowledged within the Policy that it is unlikely that Members will be required to submit to such a Check and permission will be sought on a case by case basis in consultation with the Monitoring Officer.

6 DRAFT MEMBER CRIMINAL RECORDS CHECK POLICY

The Report of Inspection of Rotherham Borough Council produced by Louise Casey CB in February 2015 highlighted that Members had not been DBS checked consistently and highlighted this as a weakness in the authority’s scrutiny and standards.

An Interim Report of the Independent Inquiry into Child Sexual Abuse published in April 2018 recognises that institutions must do all they can to ensure that those working or volunteering within them are suitable for the work they do and do not represent a risk to children. The same principles would apply to vulnerable adults.

Having regard to the above and the ongoing attention to the requirement for Members to submit to criminal record checks in appropriate circumstances, the Constitution and Ethics Committee are invited to consider whether Peterborough City Council should set out its position as a matter of policy so as to ensure that a transparent and systematic approach is being followed.

The draft Member Criminal Records Check Policy (Appendix 1) proposes an approach which meets Peterborough City Council’s governance requirements whilst also recognising the right to respect for private life under Article 8 of the European Convention on Human Rights.

7 CONSULTATION

- 7.1 Subject to the Constitution and Ethics Committee’s agreement to the recommendations set out in this report, the proposed implementation of the draft Policy at Appendix 1 will be presented to Full Council for approval. There will as part of that process be an opportunity for all members to debate the proposals before a final decision is taken as to whether the Policy should be formally adopted.

8. ANTICIPATED OUTCOMES OR IMPACT

- 8.1 It is anticipated that the Constitution and Ethics Committee will recommend the proposed approach and draft Policy for approval by Full Council.

9. REASON FOR THE RECOMMENDATION

- 9.1 It is recommended that the Policy is approved so as to ensure that the Council has a transparent

and consistent means through which to meet its statutory and general safeguarding obligations in relation to its Members and Co-Opted Members.

10 ALTERNATIVE OPTIONS CONSIDERED

10.1 *To Carry out No Checks*

Without any checks taking place it would not be possible to assess an individual's background or determine their suitability for a particular role (such as participation in the Relevant Committees). Consequently to ensure that adequate steps are taken to protect those who are most vulnerable in society it is proposed that this option is rejected.

To obtain a Basic Disclosure for all Members and Co-Optees

The Council can request Basic Disclosure in respect of any elected Member or co-optee with their permission and this gives information sufficient for most Council roles. Some Councils have taken this approach and consider it advantageous for example to increasing public confidence and in meeting its duty of care to service users and the public by enabling the identification of potential risks. Nevertheless, having regard to the safeguards already in place under elections legislation and the overall proportionality of this approach it is proposed that this option is rejected in favour of arrangements instead being made on a case by case basis as appropriate. It is open for Members or Co-Opted Members to volunteer for a Basic Disclosure at any time.

To carry out Enhanced DBS checks with a check of the barred lists

The council has a duty to seek an Enhanced Check in respect of anyone who is undertaking a Regulated Activity on its behalf. Save in exceptional circumstances members are highly unlikely to meet these criteria in the performance of their ordinary activities and would not otherwise be eligible by virtue only of their position as a Member of Co-Opted Member. Consequently this option was rejected as it is unlawful to check the Barred Lists unless Regulated Activities are being carried out.

To carry out Standard or Enhanced DBS checks in relation to all Members

The Council is only entitled to request that DBS checks are carried out in relation to Members who meet the statutory requirements set out at Section 5 of this Report. The Council is not, therefore entitled to request Standard or Enhanced checks for all Members and this option was therefore rejected again on grounds of legality. However, in accordance with the draft Policy, all Members meeting the relevant statutory requirements must consent to an Enhanced (Without Barred List) Check.

11. IMPLICATIONS

11.1 Financial Implications

The financial implications will be limited to the cost of obtaining Enhanced (Without Barred List) checks for all relevant members identified in Section 5. The current unit cost of obtaining such a check is £40 and there are 11 members of the Corporate Parenting Committee. It is proposed that the check is obtained upon appointment to the Committee or as soon as reasonably practicable thereafter/after implementation of this Policy and then every 4 years unless there is a requirement to do otherwise

11.2 Legal Implications

The proposals set out in this Report are designed to ensure that the Council maintains appropriate

standards of governance in complying with its statutory obligations in relation to Member involvement in Regulated and other Activities carried out on its behalf.

There are Human Rights responsibilities in so far as the carrying out of a DBS check infringes an individual's right to respect for private life given that enhanced checks could lead to disclosures of personal sensitive information which may otherwise be considered confidential or 'spent' for the purpose of the Rehabilitation of Offenders Act. This could deter members from standing for election or for particular roles even where the individual simply objects to interference with privacy rather than seeking to hide significant evidence of risk. This may be considered to be outweighed however by the public interest in giving assurance to vulnerable people and to society at large that elected members in a position of trust have undergone a level of vetting and scrutiny as to their suitability to discharge specific aspects of public service rather than in relation to their private lives.

11.3 **Equalities Implications**

The proposals set out in this Report do not engage or infringe Peterborough City Council's obligations under equalities legislation.

12. **BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

12.1 DBS Guidance in relation to Regulated Activity with Children in England:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739154/Regulated_Activity_with_Children_in_England.pdf

DBS Guidance in relation to Regulated Activity with Adults in England:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739152/Regulated_Activity_with_Adults_in_England.pdf

DBS Guide in relation to Eligibility for DBS Checks:

<https://dbsdirect.co.uk/resources/Posts%20eligible%20for%20a%20DBS.pdf>

13. **APPENDICES**

13.1 Appendix 1 – Draft Member Criminal Record Check Policy