

SURREY COUNTY COUNCIL

LEADER OF THE COUNCIL

DATE: 9 JANUARY 2013

**REPORT OF: ANN CHARLTON, HEAD OF LEGAL AND
DEMOCRATIC SERVICES**

SUBJECT: CRIMINAL RECORDS CHECKS FOR MEMBERS



KEY ISSUE/DECISION:

Following changes to the legislative framework, to agree policy in relation to criminal records checks for Cabinet Members and make recommendations to Council in relation to other Council positions.

DETAILS:

Changes to Legislation

1. Criminal records checks are now administered by the Government's Disclosure and Barring Service (DBS) which took over responsibility from the Criminal Records Bureau (CRB) on 1 December 2012. Consequently, CRB checks are now referred to as DBS checks. Under the relevant legislation, Members are not able to engage in a "regulated activity" without an enhanced criminal records check having been carried out and received which indicates the person is not on either the children's or adults' barred lists.
2. Until recently, the regulated activities so far as Members were concerned included:
 - Being a member of the Cabinet.
 - The discharge by a Member of any education or social services functions of the authority.
 - The opportunity for contact with children, including any contact when visiting a school or children's home if a Member frequently carries out an activity there.
 - The opportunity for contact with vulnerable adults when visiting a care home if the Member frequently carries out an activity there.
 - Being a school governor.
3. The Protection of Freedoms Act amended the definitions of regulated activity on 10 September 2012, reducing the numbers of roles requiring a criminal records check. Under the new definition, the only obvious situation where Members would still as a matter of law require a valid DBS check would be if they are carrying out the following regulated activity:
 - Having unsupervised contact with children when visiting a school or children's home if a Member frequently carries out a relevant activity there.

4. A “relevant activity” is defined as one of the following unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice / guidance on well-being, or driving a vehicle only for children. The frequency of contact referred to is at any time on 4 or more days in a period of 30 days.

The Council’s Policy

5. Based on the above changes to the legislation, the Council cannot as a matter of law insist that Members are not on the “barred lists” by having a DBS check before becoming a Cabinet Member or making any decisions in relation to education or social services functions.
6. However, the Rehabilitation of Offenders Act regulations have been amended to allow discretion for the Council still to carry out enhanced checks on individuals who were covered by the definitions of regulated activities for children and adults that existed prior to 10 September 2012. The Council can still therefore carry out checks on Cabinet Members and on councillors discharging social services and education functions.
7. Given this discretion, the possible options for DBS checks for Members undertaking certain roles and functions are considered below in turn.
8. Members
 - 8.1. Whilst the Council cannot require any Member to undertake an enhanced DBS check, it is felt that requesting Members to do so is consistent with the Council’s safeguarding duties, as well as being supportive of the Council’s and individual Councillor’s role as a corporate parent. It would also provide individual Councillors with reassurance when dealing with constituents, where they may have to deal with issues relating to vulnerable adults and children.
 - 8.2. It is recommended that Members be encouraged to undertake an enhanced DBS Check to ensure that they are able to carry out regulated activities should they arise as part of their community leadership role and as a commitment to their role as a Corporate Parent and to support the Council’s policies to safeguard children and vulnerable adults.
 - 8.3. If a Member chooses not to undertake a DBS Check, it would not prevent them from making decisions (for example at County Council or Local Committee meetings) relating to the discharge of education or social services functions of the authority. However, they would not be able to have unsupervised contact with children when visiting a school or children's home, if frequently carrying out a relevant activity there.
9. Leader of the Council
 - 9.1. The Leader of the Council is ultimately responsible for all executive decisions of the Council and as such, is involved in a range of decisions impacting on the services provided to children and vulnerable adults. In addition, the Leader of the Council plays a key role in ensuring the Council delivers its responsibilities as a Corporate Parent and in demonstrating his support for the Council’s commitment to safeguarding children and vulnerable adults. In undertaking the role of Leader, the Member will frequently come into contact

with children and vulnerable adults and therefore may undertake regulated activities as part of the role.

- 9.2. To ensure adequate safeguards are in place, it is recommended that the Constitution is amended to make it clear that the Leader will be appointed by Council subject to a valid enhanced DBS check.

10. Cabinet Members

10.1. In line with the role of the Leader, Cabinet Members will be involved in a number of decisions that directly impact on the services delivered to children and vulnerable adults. Depending on their portfolio, they could also have a statutory responsibility as Lead Member for Children or Adults, as well as be asked to chair the Corporate Parenting Board where safeguarding is crucial. Given the broad nature of a Cabinet Member's portfolio, there is potential for Cabinet Members to need to carry out regulated activities.

10.2. To ensure that Cabinet Members are not restricted from carrying out their role and are able to provide effective leadership on behalf of the Council in its role as Corporate Parent, and in demonstrating commitment to the need for safeguarding children and vulnerable adults it is recommended that the Constitution is amended to make it clear that the Leader will appoint the Deputy Leader and Cabinet Members subject to a valid enhanced DBS check.

11. Chairmen and Vice-Chairmen of the Council

11.1. As the civic leadership of the Council, the Chairman and Vice-Chairman will spend a considerable amount of their time interacting with the community, partner organisations as well as the voluntary, community and faith sectors. This will inevitably bring them into contact with local residents and service users, including children and vulnerable adults on a frequent basis.

11.2. In order to ensure that the Chairman and Vice-Chairman are not restricted from carrying out their role, and to demonstrate their commitment to the Council's policies of safeguarding children and vulnerable adults it is recommended that the Constitution is amended to make it clear that the Chairman and Vice-Chairman of the Council will be appointed by Council subject to a valid enhanced DBS check.

12. Chairmen and Vice-Chairmen of Select Committees

12.1. As Chairmen/Vice-Chairmen of Adult Social Care, children and families and education select committees are, by the very nature of their roles, dealing with the social care and education functions of the Council, it is important the public have confidence in their suitability for these responsibilities and a requirement to have a DBS check before appointment is likely to strengthen this. Their role will inevitably bring them into contact with local residents and service users, including children and vulnerable adults, and are likely to include visits to children's homes, schools and care homes.

12.2. In order to ensure that the Chairmen and Vice-Chairmen of these select committees are not restricted from carrying out their role, it is therefore recommended that the Constitution is amended to make it clear that the Chairmen and Vice-Chairmen of the Adult Social Care, Children and Families

and Education Select Committees will be appointed by the Council subject to a valid enhanced DBS check.

13. Until the recent changes a new check was required every three years. It is recommended that this same frequency should continue for the time being. A new arrangement to be able to check on-line whether there have been any changes since a criminal records certificate was issued is in the process of being developed and the Government hope to have this available in 2013.

Consultation

14. The Chief Executive and HR have been consulted and are supportive of the proposed recommendations.

Financial and value for money implications

15. An enhanced DBS check costs £44. Therefore, it would cost £3,520 to provide checks for the full council. This cost could be met from the current budget for DBS checks.

Equalities implications

16. There are no direct equalities implications.

Legal implications/legislative requirements

17. The Protections of Freedoms Act 2012 introduces new definitions for a regulated activity and therefore Members are no longer required by law to have a criminal records check in order to be a member of the Cabinet or discharge any education or social services functions of the authority. This report looks to clarify the Council policy in relation to these checks for Members.

Corporate Parenting/Looked After Children implications

18. As the County Council is Corporate Parent to any children in its care, all Members have a role to play to ensure that this responsibility is taken seriously and Cabinet Members in particular have a decision-making role which could impact on the lives of looked after children. Ensuring adequate safeguarding processes are in place shows the Council's commitment to its role as a Corporate Parent and supports best practice in this area.

Section 151 Officer commentary

19. The Section 151 Officer confirms that all material, financial and business issues and risks have been considered / addressed.

RECOMMENDATIONS:

It is recommended that the Leader of the Council:

1. Agrees that appointments of the Deputy Leader and Cabinet Members will be made subject to the Member having a valid enhanced criminal records check.
2. Encourages all Members to undertake an enhanced criminal records check as part of their role as a Corporate Parent.
3. Recommends to Council that the Constitution is amended to make it clear that the following positions will be appointed by the Council subject to a valid enhanced criminal records check:
 - Leader of the Council
 - Chairmen and Vice-Chairmen of the Council
 - Chairmen and Vice-Chairmen of Adult Social Care, Children and Families and Education Select Committees

REASONS FOR RECOMMENDATIONS:

To clarify the Council's policy in relation to criminal records checks for Members and ensure appropriate safeguarding processes are in place.

WHAT HAPPENS NEXT:

The guidance for Members on criminal records checks will be updated and circulated along with notice that a report will go to Council in March recommending that the Constitution be updated to include a valid enhanced criminal records check as a requirement for certain council positions.

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Sources/background papers:

None

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