

17 September 2015

ITEM: 8

Corporate Overview and Scrutiny Committee

Review of DBS Checks Policy and Register of Interests Process for Members

Wards and communities affected:

All

Key Decision:

Non-Key

Report of: David Lawson, Monitoring Officer

Accountable Head of Service: Fiona Taylor, Head of Legal and Democratic Services

Accountable Director: Lyn Carpenter, Chief Executive

This report is public

Executive Summary

This report sets out the current policy regarding Thurrock's approach to undertaking DBS checks and maintaining a register of interests for Elected and Co-Opted Members.

The Protection of Freedoms Act 2012 (PFA) introduced changes to the arrangements for carrying out criminal records checks. This report seeks to inform Members of the reforms, the current process and proposes changes to Council Policy in order to introduce DBS checks for all Members to ensure best practice in Thurrock.

1. Recommendation(s)

1.1 The Standards and Audit Committee are recommended to approve Option 1 below (3.14); that enhanced DBS checks are carried out for all Councillors and any Co-Opted Members who are members of any Committee or Board which discharges education or social services functions in line with the proposed policy detailed at Appendix 1.

1.2 That the current approach to maintaining and publishing Members Register of Interests be endorsed.

2. Introduction and Background

Disclosure and Barring Service (DBS) Checks

- 2.1 The Protection of Freedoms Act 2012 (PFA) introduced changes to the arrangements for carrying out criminal records checks. One of the key changes involved the merger of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) in December 2012 to form a new body called the Disclosure and Barring Service (DBS).
- 2.2. The DBS is a non-departmental public body, sponsored by the Home Office. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).
- 2.3 The changes introduced under the Protection of Freedoms Act 2012 not only affected the administrative arrangements but also scaled back the number of activities, involving work with children and adults, that are regulated; these are known as “regulated activities”.
- 2.4 Individuals on a barred list for children and/or adults cannot undertake a “regulated activity” and it is a criminal offence for the Council to allow an individual to do so without first checking whether they are on a barred list. That is why it is important for the Council to carry out pre-appointment checks in relation to individuals appointed to positions that involve the carrying out of a “regulated activity”
- 2.5 The revised definition of “regulated activity” was brought into force as a result of the PFA in September 2012. A “regulated activity” is one involving close work with vulnerable groups, including children, which a barred person must not do.
- 2.6 The legislation redefined and reduced the scope of regulated activities. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre.
- 2.7 The majority of Councillors or co-opted members do not have unsupervised contact with children or adults as part of their role and therefore will not be involved in “regulated activity”. Therefore, unless activities fall within the redefined scope of “regulated activity”, Councillors or co-opted members are not required to be checked by virtue only of their position as a Councillor or co-opted member.

- 2.8 It should be noted that the law relating to elections already provides some safeguard 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.

Register of Interests – Current Process

- 2.9 Elected Members are required to register any disclosable pecuniary interests of themselves or a spouse or civil partner who they live with, within 28 days of taking up office. It is a criminal offence if a Councillor fails, without reasonable excuse, to declare or register interests with the Monitoring Officer.
- 2.10 Currently Members Services liaise with Members once elected and advise them of the process for completing a Register of Interest form. The forms are collated by Members Services and provided to the Business Support Officer in Legal Services who works with the Monitoring Officer to ensure all forms are reviewed, signed and filed accordingly. Once reviewed and formally signed by the Monitoring Officer the information is published online to each Members website page where the public and other Members can review as they wish.
- 2.11 It is Members responsibility to advise the Monitoring Officer of any changes to their register of disclosable pecuniary interests and declare these at meetings where relevant.

3. Issues, Options and Analysis of Options

Thurrock's current DBS check policy for Members

- 3.1 Thurrock's current policy is that those Members appointed to the following Committees are required to undertake a DBS check prior to taking their seats:
- Children's Services Overview and Scrutiny Committee
 - Health and Wellbeing Overview and Scrutiny Committee
 - Standards and Audit Committee
 - Corporate Parenting Committee
- 3.2 This is approved at Annual Council each year when the allocation of Committee Seats and Committee appointments are agreed, and under Committee Procedure Rule 13.2 (Chapter 5, Part 2 of the Council's Constitution) which states that members of the Corporate Parenting Committee are required to undertake a DBS Check prior to taking up their role.
- 3.3 Currently once a Member has been appointed to one of the aforementioned Committees above, Members Services coordinate with the Member and HR to advise that a DBS Check is required to be undertaken. The Member has a duty to complete the application and submit this to the Disclosure and Barring Service (DBS).

- 3.4 Once the check is completed, DBS will send a certificate listing the results to the applicant (the Member). The Member is required to provide this certificate to the HR department, as their employer, who will need to see the results.
- 3.5 The HR department are responsible for advising the Monitoring Officer of any positive result but should also keep the Monitoring Officer fully informed of the number of clear checks received. The Monitoring Officer would be expected to inform the Chief Executive of any positive result to determine an appropriate course of action.
- 3.6 The results of the DBS check are strictly confidential and are maintained within the HR department. In accordance with Section 124 of the Police Act 1997, disclosure information is only passed to the people authorised to receive it in the course of their duties, such as the Monitoring Officer, Chief Executive and other officers as appropriate, such as the Head of HR, OD & Transformation and the Principal Solicitor for Employment & Litigation.
- 3.7 There is currently no formal time period within which this must be completed, however it is expected that DBS checks would be undertaken as soon as practicable after being appointed to the Committee at Annual Council in May so that they can undertake their duties on the Committee when they begin their work for the new municipal year.

Presenting the Options

- 3.8 Councillors have a wide range of responsibilities and take decisions in relation to core services relating to children and adults, for example, the corporate parenting role. These responsibilities may require Councillors to access sensitive information about, or have contact with, children and adults.
- 3.9 Although the duties and responsibilities of Councillors do not fall under the scope of “regulated activity” and Councillors are no longer required to be checked if not undertaking such activity, the Council can still request that DBS checks (excluding a check of the barred lists) be carried out.
- 3.10 There are two levels of DBS checks that can be carried out:
 - Standard DBS checks which show disclose previous cautions, convictions, police reprimands and warnings relating to an individual.
 - Enhanced Checks (without a check of the barred lists) provide the information resulting from a standard DBS check with the addition of relevant police information provided by the local police force. Chief police officers are asked to provide any information which they “reasonably believe to be” “relevant and ought to be included in the [enhanced DBS] certificate”, having regard to the purpose for which the certificate is sought.

- 3.11 To address concerns about proportionality, the Government has introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check.
- 3.12 The Committee are asked to consider the current approach adopted by Thurrock in regards to Members DBS checks and recommend to the Standards and Audit Committee whether the policy should remain unchanged, or if one of the following options (or alternative) should be adopted.
- 3.13 It is proposed that **Option 1** be the preferred option to recommend to the Standards and Audit Committee for approval in order to improve the DBS check process and strengthen public confidence in Thurrock.

Option 1: To carry out enhanced DBS checks for all Councillors and any Co-Opted Members who sit on a Board or Committee that discharges any education or social services function

- 3.14 This preferred option proposes that the Council as an employer carries out enhanced DBS checks for all Councillors in order to respond proportionately to the risk and reassure the public, and the draft policy attached at **Appendix 1** reflects this. Checks are also proposed for any Co-Opted member serving on a Committee or Board that discharges any education or social services function of the Council, which will include the Children's Services Overview and Scrutiny Committee, Corporate Parenting Committee and the Health Overview and Scrutiny Committee. Under this proposal Co-Opted Members of the Housing Overview and Scrutiny Committee, Planning, Transport and Regeneration Overview and Scrutiny Committee and Standards and Audit Committee would not be required to undergo a DBS check.

The enhanced level DBS certificate is recommended over the standard check as it contains any additional information held by the local police that they reasonably consider to be relevant to the individual's role. This information is useful to determine whether there are concerns under investigation locally which have not resulted in any formal action and any information provided may also help put details of any offence in context.

Option 2: To carry out no DBS checks

- 3.15 This option would be a change to the current Council Policy position and without any checks taking place it would not be possible to check an individual's background and determine whether an appointment to a particular role may be less suitable for them in light of a relevant disclosure. In order to protect those who are most vulnerable in society it is proposed that this option be rejected; the Council may be open to criticism if it did not take reasonable steps to assess and mitigate the risk.

Option 3: To carry out standard DBS checks for all Councillors

- 3.16 Standard checks only reveal basic information concerning any unspent convictions and cautions, police remands and warnings.

Option 4: To carry out enhanced DBS checks with a check of the barred lists

- 3.17 This option was ruled out because it is not lawful to check the barred lists unless the individual who is being checked is going to undertake a “regulated activity” as amended by the Protection of Freedoms Act. Councillors would not be eligible by virtue only of their position as a Councillor or Co-Opted member.

Option 5: To carry out DBS checks in relation to specific roles which have some relationship with services that engage in “regulated activity”.

- 3.18 Committees are responsible for decision taking therefore identifying specific individuals to DBS check would not be appropriate. Since Councillors engage in a variety of functions across the Council it is more appropriate to check all Councillors.

4. Reasons for Recommendation

- 4.1 It is proposed that Option 1 is adopted in light of the changes to the law and the redefined scope of “regulated activity”.
- 4.2 Although all Councillors and Co-Opted Members are not required to be DBS checked by virtue of their position (unless involved in “regulated activity”), Councillors are community leaders and work with local communities – including the public, community, voluntary and private sectors – to develop a vision for the local area and to find ways to improve services and quality of life for residents. In this role Councillors are expected to meet and engage with the public and could come into contact with residents – and thereby their families, including children and vulnerable people – in a multitude of situations, including within resident’s own homes.
- 4.3 As community leaders and corporate parents, residents would expect Councillors to lead and behave by example and place a great deal of trust in Elected Members by virtue of their position. Therefore it could be argued that if every Member undertook a DBS check this could strengthen public confidence and foster best practice in Thurrock.
- 4.4 The current process for maintaining a record of Members disclosable pecuniary interests is working well. All of Members Register of Interests forms are available online under each Councillor’s web page for public view and Members submit amended register of interests forms where appropriate. Thurrock is meeting its statutory obligation.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 Not applicable.

6. Impact on corporate policies, priorities, performance and community impact

6.1 This report supports the Council's Corporate Vision, Priorities and the Aim "to become a **confident**, well managed and **influential** council regarded by residents, peers and partners as **ambitious** for the people of Thurrock and totally focused on meeting their current and future **aspirations**."

7. Implications

7.1 Financial

Implications verified by: **Sean Clark**
Head of Corporate Finance

The cost of each enhanced DBS check is £44. Thurrock has 49 Elected Members and 16 Co-Opted Members, 10 of which would be subject to a DBS Check if the Committee recommended Option 1 to the appropriate decision maker for agreement. If it was subsequently agreed, this would cost the Council £2,596. Further ongoing costs would be incurred upon renewal of Councillors DBS checks after the period specified in the policy (suggested as every 4 years) or as and when new Members are elected. As the Co-Opted Members appointed to Committees could change annually this would also incur an additional ongoing cost. This cost would need to be met from the budget within Legal and Democratic Services.

7.2 Legal

Implications verified by: **David Lawson**
Monitoring Officer and Deputy Head of Legal

The proposed policy complies with the exception to the Rehabilitation of Offenders Act 1974 and with the Disclosure and Barring Service Code of Practice. 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.

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 usually 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 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.

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.

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.

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 above or will serve on fostering and adoption panels.

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.*

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.

7.3 **Diversity and Equality**

Implications verified by: **Rebecca Price**
Community Development Officer

The report strengthens Thurrock's public sector equality duty and the impact of the proposals on safeguarding the community and human resources have been considered.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

Not applicable.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None.

9. **Appendices to the report**

- Appendix 1: Proposed revised policy on Disclosure and Barring Service (DBS) Checks for Councillors and Co-Opted Members.
- Appendix 2: Code of Practice for registered persons and other recipients of disclosure information.

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