

6 March 2018

Report of	Assistant Director of Communities	Author	Andrew Harley ☎ 282880
Title	Disclosure and Barring Checks for Councillors		
Wards affected	All		

**Committee is asked to consider whether the Council should require Disclosure and Barring Service checks for councillors.**

## 1. Executive Summary

- 1.1 This report provides background information and reviews policy options in regard to criminal history checks for councillors. Such checks are administered by the Disclosure and Barring Service (DBS).

## 2. Recommended Decision

- 2.1 It is recommended that the Council continues with its current approach of not requiring or seeking DBS checks for councillors.

## 3. Reason for Recommended Decision

- 3.1 There is no legal basis on which the Council can currently require or seek either Enhanced or Standard DBS Checks on councillors. The role does not constitute a “named position” eligible for checks, and ward councillors do not carry out “regulated activity” as defined by the Freedom of Information Act 2012.
- 3.2 Although the legislative framework allows discretion on the issue of Basic Checks, there is no clear case for the introduction of such a measure:
- Basic checks show “Unspent Convictions” only, and are therefore of limited value.
  - There is no clear framework for the enforcement of such a policy as it is not required in law.

## 4. Alternative Options

- 4.1 Since 2012, the issue of DBS checking for councillors has become a policy matter for individual councils. The Council could decide to require sight of Basic DBS Checks.

## 5. Background Information

- 5.1 At the meeting of this Committee on 17 October 2017 Cllr Willetts requested that the Council gives due consideration to whether it should conduct DBS Checks on councillors. The Council's Monitoring Officer agreed to have a paper prepared for the Committee.
- 5.2 It is appropriate for the Committee to consider this matter in the light of its legal duties in respect of safeguarding children and 'adults with needs for care and support', as defined in legislation including the Children Act 2004 and the Care Act 2014.
- 5.3 Prior to 2012, local authorities routinely carried out Criminal Record Bureau (CRB) checks on elected members. However, the [Protection of Freedoms Act 2012](#) created the [Disclosure and Barring Service](#) and a new system of checks. This included a more restrictive set of criteria to determine when checks could be carried out and on whom. Since 2012, the issue of DBS checking for councillors has become a policy matter for individual councils.
- 5.4 National abuse enquiries including those in Rochdale, Rotherham and Oxfordshire, have raised fresh concerns about how local authorities can ensure that they are protecting vulnerable people, especially children, from sexual exploitation and other forms of abuse. In some cases, public officials including councillors have ignored, or been implicated in, abuse.
- 5.5 For information, the different types of checks carried out by the Disclosure and Barring Service are included within the table below:

Information Searched	Type of Check			
	Basic	Standard DBS	Enhanced DBS	Enhanced DBS (including barred list check)
Unspent Convictions	Yes	Yes	Yes	Yes
Spent Convictions	No	Yes	Yes	Yes
Cautions, Warnings, Reprimands	No	Yes	Yes	Yes
Other relevant police information	No	No	Yes	Yes
Children or adults barred list	No	No	No	Yes

### 5.6 Enhanced Level Checks

The Disclosure and Barring Service offered the following advice to another district council in Essex in 2016 which had sought clarification on whether DBS checks were appropriate for councillors:

"Councillors and Mayors, as named positions, are not eligible for a DBS check. However, it is accepted that individuals tasked with certain functions (set out [here](#)) would have been eligible for an 'Enhanced' level check with a check against the appropriate Barred list. However, following changes in legislation, and the enactment of the Protection of Freedoms Act 2012, those positions were removed from the scope of Regulated Activity and consequentially *an entitlement now only*

*exists for a Councillor (not Mayor) at 'Enhanced only' level if the individual retains those same responsibilities. Please take into consideration that DBS checks are not mandatory unless there exists a piece of legislation that makes checks a requirement for the role being offered.*

I am sure that you will appreciate that, if the councillor or Mayor has other duties outside of their role that would meet the conditions for a DBS check with barred lists then it would be for the employer, i.e. the council, to determine what level of check would be appropriate for those additional duties. It is an offence for an employer to knowingly employ an individual who is barred from working in Regulated Activity, i.e. working regularly, unsupervised with member of the vulnerable groups.” (as summarised [here](#)).

The key parts above have been highlighted, including the passage that “*an entitlement now only exists for a Councillor... at 'Enhanced only' level, if the individual retains those same responsibilities*”. The responsibilities being referred to here are in respect of Education or Social Care, which are responsibilities that Colchester Borough Council members do not have.

- 5.7 There is therefore no legal basis on which the Council can currently require or seek Enhanced DBS Checks on councillors.

#### 5.8 Standard Level Checks

It would not be possible for the Council to apply for, or to request from councillors, Standard Level DBS Checks. These are in-depth background checks used by employers on behalf of applicants to verify if a candidate is suitable to hire for work in a specific industry. The Council is unable to apply directly for any DBS checks for councillors unless they fall within the rules of carrying out “[regulated activity](#)” (under the Freedom of Information Act 2012) which they do not on the basis of a ward councillors’ normal duties.

#### 5.9 Basic Level Checks

The Council could require councillors to apply for a Basic Level DBS Check themselves, which could then be produced for the Monitoring Officer and a record kept. However, such checks show unspent convictions only, and do not show spent convictions, cautions, warnings, reprimands, other relevant police information, or children or adults barred list (as detailed within para. 5, above).

- 5.10 Basic DBS checks need to be applied for by the individuals themselves. The cost of each check is £25.00. The cost of reimbursing the cost of checks for 51 councillors would be £1,275.00.
- 5.11 The Council has sought information on the approach of neighbouring second tier local authorities towards DBS checks (on 24 October 2017 and 14 February 2018), to which all eight replies have confirmed that no checks (including Basic Level checks) are carried out.
- 5.12 Some wider research has been carried out. Cornwall Council is unusual in requiring Basic Level DBS checks from all councillors. It obtained legal advice in 2014-15 which confirmed it could proceed with such an approach. (It requires Enhanced Level checks for councillors on committees which decide on Education or Social Care functions.) The [advice](#) it received has been made available to the public, and is reproduced below:

“Basic Certificates are available for all Members and co-optees on payment of the prescribed fee, without further eligibility criteria. Certificates list only unspent convictions. The Council is at liberty to request basic certificates in respect of any elected Member or co-optee.”

- 5.13 The Isle of Wight Council, which is a unitary authority, considered the issue of whether to require Basic Level DBS checks of councillors on 15 November 2017. The minutes of the [Full Council](#) meeting is published on its website. The relevant motion is included below:

“Council resolves that all Members must undertake a basic DBS check and that all Members in decision making roles on Committees/Panels which involve children and young people must undertake enhanced checks.”

The motion was seconded but, following debate, the motion was put to a vote and was lost.

5.14 Conclusion

There is no legal basis on which the Council can currently require or seek either Enhanced or Standard DBS Checks on councillors. Although the legislative framework allows discretion on the issue of Basic Checks, there is no clear case for the introduction of such a measure: Basic checks show “Unspent Convictions” only, and are therefore of limited value, and there is no clear framework for the enforcement of such a policy as it is not required in law.

**6. Equality, Diversity and Human Rights implications**

- 6.1 This report helps the Council to discharge its legal obligation to have ‘due regard’ to the need to ‘safeguard and promote the welfare of children’. There are no specific Equality and Diversity implications, and an Equality Impact Assessment is not required.

**7. Strategic Plan References**

- 7.1 The issue of DBS checking is being considered within the context of the Council’s safeguarding duties. This report allows proper consideration of issues relevant to the Council’s wider Strategic Objectives contained within its Strategic Plan including under ‘Well-being’, its aim to “target support to the most disadvantaged residents and communities”.

**8. Consultation**

- 8.1 No direct consultation with residents has been deemed necessary as part of this report. The Council has consulted on an informal basis with other councils, the results of which have been referred to further above

**9. Publicity Considerations**

- 9.1 No specific publicity considerations are relevant here.

**10. Financial implications**

- 10.1 Should Basic DBS checks be required, the Council could decide to reimburse individual councillors. As each check would £25.00, the cost of reimbursing 51 councillors could amount to £1,275.00.

## **11. Community Safety Implications**

- 11.1 The Council has legal duties in respect of safeguarding children and 'adults with needs for care and support', as defined in legislation including the Children Act 2004 and the Care Act 2014. Activities undertaken in this area can help to improve Community Safety for residents.

## **12. Health and Safety Implications**

- 12.1 The Council has legal duties in respect of safeguarding, and proper consideration of its duties in this area can help to improve Health and Safety for residents.

## **13. Risk Management Implications**

- 13.1 This report places the issue of DBS Checks before councillors in some detail which assists the Council in managing risks as effectively as possible in the light of its wider safeguarding duties.