

Council



Thursday 23 February 2023

Title	Disclosure and Barring Service (DBS) Checks for Councillors
Purpose of the report	To make a decision
Report Author	Farida Hussain, Group Head Corporate Governance
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	N/A
Corporate Priority	This item is not in the current list of Corporate Priorities but still requires a Committee decision.
Recommendations	<p>Committee is asked to:</p> <ol style="list-style-type: none">1. Note the new grounds for disqualification from being elected to, or being a member of, a local authority that have been introduced by the Local Government (Disqualification) Act 2022 as set out in Appendix A; and<ol style="list-style-type: none">a) Approve the introduction of Basic Disclosure and Barring Service checks (DBS) for all councillors;b) Agree to adopt the DBS Checks for Members Protocol for inclusion in the Council's Constitution at Appendix B; andc) Agree to delegate to the Monitoring Officer to make the necessary amendments to the terms of reference of the Standards Committee, to include the resolution of issues concerning the discharge of members' roles in light of DBS check responses.
Reason for Recommendation	<p>Following the introduction of the Local Government (Disqualification) Act 2022 ("the 2022 Act"), additional disqualification criteria have been added that disqualifies individuals from being elected to or holding certain positions in local government in England.</p> <p>There is currently no statutory requirement or policy in place for DBS checks for councillors. In order to formalise the requirement</p>

	<p>for DBS checks to be carried out by for councillors, it is necessary to make amendments to the Constitution.</p> <p>There is potential that the public may be at risk if a councillor has a serious conviction that the Council is not aware of. There may be a reputational risk to the Council if a councillor is found to have a criminal conviction/s.</p>
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1. Summary of the report

- 1.1 The report sets out the changes to disqualification criteria introduced by the 2022 Act and also sets out relevant DBS legislation, guidance, and practice in other areas. It further outlines the level of DBS checks that could legally be carried out in relation to Spelthorne Councillors. It seeks agreement to the proposed approach for Spelthorne Councillors to undertake Basic Disclosure and Barring Service checks.

2. Key issues

- 2.1 The requirement for councillors to undertake DBS checks was proposed by the former and current lead councillor for safeguarding Cllr S Doran and Cllr M Attewell at recent Spelthorne Strategic Safeguarding Board meetings.
- 2.2 There is no legal requirement for councillors to undertake DBS checks, however candidates for election to local government must declare they are not disqualified from standing using prescribed 'Consent to Nomination' forms at nomination. It is a criminal offence to make a false statement on nomination papers.
- 2.3 The 2022 Act, which came into force on 28 June 2022, introduces new grounds on which a person is disqualified from being elected to, or holding, certain positions in local government in England, including the position of councillor. This new disqualification criteria explicitly disqualifies individuals who are subject to the relevant notification requirements or orders due to sexual offences from standing or remaining in office. The new disqualification criteria are set out in more detail in Appendix A to this report.

Levels of DBS checks that can be applied for from the DBS

- 2.4 **Basic disclosure check** – shows any 'unspent convictions' a person may have in the UK. (An unspent conviction is a conviction that a person is still in the rehabilitation process for and will stay on their record. This is predetermined according to the nature of the crime). A basic disclosure shows a conviction record at a point in time, so there is no set time that it lasts for. Individuals can apply for a Basic Disclosure themselves.
- 2.5 **Standard disclosure check** – checks for spent and unspent convictions, cautions, reprimands, and final warnings.
- 2.6 **Enhanced check** – this includes the same as the standard check plus any additional information held by local police that is reasonably considered relevant to the role being applied for.

- 2.7 **Enhanced with barred list checks**, this is like the enhanced check, but includes a check of the DBS barred lists. An employer can only ask for a barred list check for specific roles. It's a criminal offence to ask for a check for any other roles.

The level of DBS check that can be submitted for a Councillor depends on the role that is being carried out and is based on whether "**Regulated activity**" as set out by the Safeguarding Vulnerable Groups Act 2006 ("SVGA") is being undertaken. In summary these relate to certain types of activities and interactions with children and vulnerable groups.

DBS and Council Members

- 2.8 The definition of Regulated Activity from the SVGA outlines that a Member or co-optee will be undertaking regulated activity if they:

- (a) discharge, as a result of their membership, any education or social services functions of the Council;
- (b) are a Cabinet Member (and the cabinet discharges education and social services functions);
are a member of a committee of the Cabinet
or
- (c) they are a member of a committee of the Council which discharges education or social services functions.

- 2.9 There is no unified approach to councillor DBS checks nationally. None of the Surrey Boroughs and Districts require their councillors to undertake a DBS check. Surrey County Council require their councillors to have enhanced DBS checks as some of their councillors are responsible for education and social services functions.

Spelthorne Councillors

- 2.10 The duties of Spelthorne Councillors mean that a standard or enhanced DBS check cannot legally be undertaken. Spelthorne Councillors could however be required to undertake a **Basic DBS check as a requirement under DBS Checks for Members Protocol**. This protocol will be included in the Council's Constitution at Part 5 Codes and Protocols.

- 2.11 Upon election councillors would be asked to apply online for a basic Disclosure and Barring Service (DBS) check. They would receive a copy of their record including any criminal records. The check will only show convictions that are not 'spent', for example some types of caution will disappear after 3 months. It usually takes up to 14 days for the certificate to arrive. In order to apply the member will need to provide:

- i. Addresses for the last 5 years and dates lived there
- ii. National Insurance number
- iii. Passport
- iv. Driving licence

- 2.12 Other practicalities include:

- i. The online service is available from 8am to 11.30pm

- ii. The councillor will need to pay for the basic DBS check at the time of application with a debit or credit card or by Google Pay or Apple Pay. The councillor would then claim the money back from Spelthorne Borough Council (SBC).
 - iii. It is possible for SBC to pay the fee, but this would have to be done within 10 days of the application, which could create unnecessary pressure on officers and creates a practicality issue due to the availability of corporate credit cards.
 - iv. Committee Services would view the DBS certificate and record that this has been done. If convictions are visible a decision would be made in accordance with the legislative guidance with a referral to the Monitoring Officer to consider if any adverse entries should be considered by the Standards Committee.
- 2.13 If a councillor has a basic DBS check this will only cover their role as a councillor. Any role outside of the council involving work with children or adults at risk will require an additional check to be undertaken by the agency they work or volunteer for (if applicable).

3. Options analysis and proposal

- 3.1 It is proposed that upon election Members immediately apply for a Basic DBS check within 14 days of being elected and submit the certificate to Committee Services within a further 14 day period of receipt.

i. Positive points of this proposal

- a. This will ensure that SBC are aware of convictions which affect the suitability of the councillor to work in a public domain/bring the council into disrepute.
- b. The proposal provides added assurance that the Council is committed to promoting high standards.

ii. Negative points of this proposal

It will require Committee Services officer time to instruct councillors, to view the DBS certificates, keep records and reimburse the councillors. If convictions are identified, it may require legal advice and committee time. There will also be an impact on councillor time to submit the information required.

Some councillors may consider that this is an invasion of privacy.

Some councillors may struggle to apply online if they have limited IT skills however IT assistance may be provided.

There will be a financial cost to the council, and this will be an ongoing cost if the DBS checks are undertaken every four years. (see Finance implications)

- 3.2 The other option is to remain with the current position of not asking councillors to apply for a Basic DBS check.

i. Positive points of this proposal

There will be no impact on officer or councillor time

There will be no financial impact

ii. **Negative points of this proposal**

Councillors may have criminal convictions that have not been declared which may potentially put the public at risk.

The Council may be brought into disrepute if convictions are identified after a councillor has been elected.

4. Financial implications

4.1 The current cost of a Basic DBS check is £23. There are 39 councillors. This would cost the council £897.00 every four years. There will be additional costs if new councillors are elected following casual vacancies. There are also the hidden costs of staff time connected with viewing certificates, recording and reimbursement. There will be additional staff costs if legal advice is required.

5. Risk considerations

5.1 There is potential that the public may be at risk if a councillor has a serious conviction that the Council is not aware of. There may be a reputational risk to the Council if a councillor is found to have a criminal conviction.

6. Procurement considerations

There are no procurement considerations

7. Legal considerations

7.1 The legal implications are set out in the report.

8. Other considerations

8.1 There are no other considerations

9. Equality and Diversity

9.1 There are no impacts on equality and diversity

10. Sustainability/Climate Change Implications

10.1 There are no impacts on sustainability or climate change issues.

11. Timetable for implementation

11.1 If a decision is made to approve the proposal. Information will be sent out by Committee Services prior to the candidate nominations deadline on 4th April 2023 to ensure that candidates know what will be expected of them upon election.

12. Contact

12.1 Farida Hussain, Monitoring Officer - f.hussain@spelthorne.gov.uk

Background papers: There are none.

Appendices

Appendix A – Local Government (Disqualification Act) 2022

Appendix B - Disclosure and Barring Services Checks For Members Protocol

APPENDIX A – LOCAL GOVERNMENT (DISQUALIFICATION ACT) 2022

1. Background and Context

1.1 In 2017 the Government consulted on proposals to update the disqualification criteria for councillors, London Assembly members and elected mayors to bring them into line with both modern sentencing practice and the values and high standards of behaviours the electorate have a right to expect of the elected members that represent them. In October 2018 the government issued a summary of responses to that consultation and gave a commitment to seek to legislate to ensure that the disqualification criteria would be amended to also include individuals who are subject to either the notification requirements set out in the Sexual Offences Act 2003 (commonly known as ‘being placed on the sex offenders register’) or a Sexual Risk Order made under section 122A of the Sexual Offences Act 2003.

1.2 The 2022 Act gives effect to the Government’s commitment to legislate in this area. It expands the new disqualification criteria beyond the offences consulted upon in 2017 to ensure that they are specific and comprehensive in disqualifying individuals subject to the relevant notification requirements or relevant orders imposed in respect of sexual offences, and includes the territorial equivalents of such notification requirements and orders in the devolved nations (and the Isle of Man and Channel Islands) in the event that someone subject to such territorial equivalents subsequently stands for elected office in England.

2 The New Disqualification

2.1 The 2022 Act introduces a new disqualification, inserted as Section 81A of the Local Government Act 1972. Under that section a person is disqualified from being elected to, or being a member of, a local authority in England if the person is subject to:

- a) any relevant notification requirements, or
- b) a relevant order.

2.2 “Relevant notification requirements” means the notification requirements of Part 2 of the Sexual Offences Act 2003 (or equivalent requirements applying in the Channel Islands or the Isle of Man).

2.3 “Relevant order” means:

- a) a sexual harm prevention order under section 345 of the Sentencing Code;
- b) a sexual harm prevention order under section 103A of the Sexual Offences Act 2003;
- c) a sexual offences prevention order under section 104 of that Act;
- d) a sexual risk order under section 122A of that Act;
- e) a risk of sexual harm order under section 123 of that Act; or
- f) certain equivalent legislation to the above applying in the devolved nations, the Channel Islands or the Isle of Man.

2.4 A person who is subject to any relevant notification requirements referred to at paragraph 2.2 above is not to be regarded as disqualified until:

- a) the expiry of the ordinary period allowed for making an appeal or application against the conviction, finding, caution, order or certification in respect of which the person is subject to the relevant notification requirements, or
- b) if such an appeal or application is made, the date on which it is finally

disposed of or abandoned or fails because it is not prosecuted.

- 2.5 Similarly, a person who is subject to a relevant order referred to at paragraph 2.3 above is not to be regarded as disqualified until:
- a) the expiry of the ordinary period allowed for making an appeal against the relevant order, or
 - b) if such an appeal is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.
- 2.6 The disqualification introduced by the 2022 Act does not operate retrospectively. Therefore, it does not disqualify a person who became subject to any relevant notification requirements or a relevant order before the 2022 Act came into force on 28 June 2022.
- 2.7 Consequential changes to the rules for administering elections have also been made (either by the 2022 Act itself or under secondary legislation), including to the prescribed consent to nomination form. Candidates are now required to declare when standing that they are not disqualified under the newly inserted Section 81A of the Local Government Act 1972.
- 2.8 The DBS is a non-departmental public body, sponsored by the Home Office which provides access to criminal records and other relevant information for organisations in England and Wales. DBS checks provide a controlled and regulated route for assurance in relation to a person's criminal convictions and cautions where this is required. DBS is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults (these are the statutory lists containing details of people considered unsuitable to work with children and /or adults).

APPENDIX B – DISCLOSURE AND BARRING SERVICE CHECKS FOR MEMBERS PROTOCOL

1. The effective date of commencement for this protocol is 4th May 2023.
2. This Protocol complies with the exception to the Rehabilitation of Offenders Act 1974 and with the Disclosure and Barring Service (“DBS”) Code of Practice.
3. This Protocol replaces all previous policies, decisions and/or precedents relating to criminal records checks for Spelthorne Borough Councillors and co-opted members.

General Principles

4. As the Council has a duty to protect the most vulnerable residents, this Protocol requires all councillors to undergo basic level DBS checks.
5. For certain Member appointments a higher level of check may be required. In those instances, the councillor will be advised.

The Process

6. All newly elected councillors shall be required to undergo a basic DBS check.
7. Within 14 days of being elected as a councillor or becoming a co-opted member of Spelthorne Borough Council, the councillor shall apply for a basic DBS check. The cost of this check may be claimed as a councillor expense.
8. Within 14 days of receipt of the DBS certificate, the relevant councillor or co-opted member will show the original certificate to a member of Committee Services and a copy of the certificate shall be retained. Where a check is not clear, for instance, it contains details of an offence, a copy of the DBS certificate shall be referred to the Monitoring Officer, unless the content of the DBS certificate is disputed and the dispute is raised with the DBS within 3 months of the date of issue, in which case the certificate must be provided to the Monitoring Officer within 14 days following the outcome of the dispute.
9. In accordance with Section 124 of the Police Act 1997 disclosure information will only be passed to those people who are authorised to receive it in the course of their duties. The Monitoring Officer will maintain a record of the date a check was requested, the date a response was received and a ‘list’ of all those to whom the disclosure or disclosure information has been revealed together with other relevant information. It is a criminal offence to pass this information to anyone who is not entitled to receive it.
10. Disclosure information will only be used for the specific purpose for which it is requested and for which the applicant’s full consent has been given.
11. Copies of the DBS certificate shall be destroyed securely at the end of the councillor’s term of office.

The Use of Disclosure Information

12. The existence of a criminal record or other information revealed as a result of a DBS check will not automatically debar a Councillor from holding office.

13. In the event that the disclosure information received raises issues of concern, the Monitoring Officer in consultation with the relevant Group Leader, will then discuss with the individual Councillor the restrictions considered necessary, to safeguard members of the public.

14. In the event that any issues arising from DBS checks are of such significant concern that they can not be resolved by the actions in paragraph 13 above or the councillor in question is a Group Leader, the Monitoring Officer shall refer the matter to the Standards Committee for consideration.

15. This Protocol will be reviewed every two years and updated as and when required as a result of changes in the law.