

Report of	Meeting	Date
Director (Policy and Governance)	Overview & Scrutiny Task Group – Child Sexual Exploitation review	10 November 2016

ELIGIBILITY OF ELECTED MEMBERS FOR DISCLOSURE & BARRING SERVICE DISCLOSURE APPLICATIONS

PURPOSE OF REPORT

1. This report establishes the eligibility for elected members to apply for disclosures through the Disclosure and Barring Service (DBS) and the availability of alternative provisions.

RECOMMENDATION(S)

2. It is recommended that applications for disclosures are not submitted to the DBS in respect of Elected Members as this is likely to be outside the legislative framework relating to DBS Disclosures.
3. Members may consider, basic disclosures applications through Disclosure Scotland, however, these would only provide details of any unspent convictions, and elected members are currently legally required to disclose all unspent convictions, and there would be no mechanism to enforce elected members to complete applications.

EXECUTIVE SUMMARY OF REPORT

4. The report looks at the legal requirements to enable disclosure applications to be made through the DBS and whether this would permit such disclosure to be applied for in respect of elected members.
5. The information obtained would indicate that it would not be lawful to apply for disclosures through the DBS for elected members. Though an alternative provision does exist through Disclosure Scotland, though this would not provide as much information or level of check, and is unlikely to be recognised as being comparable to a DBS Disclosure certificate.

Confidential report Please bold as appropriate	Yes	No

CORPORATE PRIORITIES

6. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	X

BACKGROUND

7. The Disclosure and Barring Service (DBS) which was formerly the Criminal Records Bureau (CRB) was established in December 2012 under part V of the Protection of Freedoms Act to undertake disclosures and barring functions.
8. The purpose behind the DBS is to establish the integrity of individuals working in sensitive or high risk areas, such as prisons and the courts, and to safeguard children and adults, by providing organisations with information, primarily criminal records checks, regarding prospective employees and/or volunteers.
9. The DBS can only carry out criminal record checks for specific positions, professions, employment, offices, works and licences which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and those prescribed in the Police Act 1997 (Criminal Records) as amended.
10. Individuals cannot apply directly to the DBS for any level of disclosure and must go through a registered body in order to obtain a disclosure certificate. Before a registered body can consider submitting an application for an individual to have a criminal records check through DBS, they are legally responsible for ensuring that they are entitled to submit an application for that role.
11. The eligibility for DBS Disclosures is very prescriptive and it is an offence to apply for a disclosure for someone who is not eligible or to provide “a false statement for the purpose of obtaining, or enabling another person to obtain a certificate.” (Home Office Revised Code of Practice for Disclosure and Barring Service Registered persons.)

LEVELS OF DISCLOSURE THROUGH THE DBS AND ELIGIBILITY CRITERIA

12. The DBS carry out three levels of disclosures, detailed below, each with its' own eligibility criteria, which is established in compliance with the legislation detailed above, and therefore organisations requesting a disclosure to be carried out must establish that they are legally entitled to submit an application for that particular level of disclosure for a particular role or person.

Standard Check

13. The **standard check** is only available for duties, positions and licences included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 as amended. Examples provided by the Disclosure and Barring Service include, court officers, employment within a prison, and Security Industry Authority (SIA) licences.
14. A standard level certificate 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 Check

15. The **enhanced check** is available for specific duties, positions and licences, which must be included in both the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) as amended and the Police Act 1997 (Criminal Records) regulations. Examples provided by the Disclosure and Barring Service include, regularly caring for, training, supervising or

being solely in charge of children, specified activities with adults in receipt of health care or social care services and applicants for gaming and lottery licences.

16. An enhanced level certificate contains the same PNC information as the standard level certificate but also includes a check of information held by police forces.

Enhanced check with barred list check(s)

17. The **enhanced check with barred list check(s)** is only available for those individuals who satisfy the criteria for an enhanced disclosure and who carry out a regulated activity relating to either children or adults as specified within the Police Act 1997 (Criminal Records) Regulations as being eligible for checks to be made against the appropriate barred lists(s).
18. Regulated activities are defined by the Safeguarding Vulnerable Groups Act 2006 and as amended by the Protection of Freedoms Act 2012. Examples provided by the Disclosure and Barring Service include, prospective adoptive parents and hackney and private hire driver (PHD) licences.
19. An enhanced level certificate with barred list check(s) contains the same PNC information and check of information held by police forces as an enhanced level check but in addition will check against the children's and/or adult's barred lists.

Regulated activities

20. Information regarding Regulated activities for adults is produced by the Department of Health (extract):

“This means for example, anyone providing personal care to an adult is in a regulated activity irrespective of whether that occurs in, say a hospital, a care home, a day care centre, a prison or in sheltered housing.”

Information regarding regulated activities relating to children is produced by the Department for Education (extract).

“unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;”

Eligibility for Elected Members to be asked to apply for Disclosures through the DBS

21. Assessing the criteria relating to eligibility for disclosure applications through the DBS for standard disclosures and enhanced disclosures with or without barred list check(s), it is considered that elected members do not fall within the specified criteria in order for them to be legally eligible for any level of disclosure carried out by the DBS. The DBS can also challenge applications submitted to them where they do not consider that the applicant is eligible.
22. Whilst there will be occasions when members will come into contact with children and adults, in order for a disclosure to be requested, it must satisfy the legally defined criteria. With regard to children, in addition to the activity being carried out it must also be undertaken regularly. Regular is defined as once a week or more often (frequently) or on 4 or more days in a 30 day period, and would generally have to relate to the same person(s). There is no such regularity criteria relating to activities relating to adults.

23. Individuals who have been asked to submit an application for a DBS Disclosure can challenge the right of an organisation to request them to complete a form by contacting the DBS indicating why they feel they may be ineligible.
24. The DBS will not, however, provide specific advice to a registered organisation as to whether a post is eligible for a particular level of DBS disclosure. They would refer the organisation to the relevant criteria for them to decide, in light of the duties undertaken, whether it was eligible. The DBS can request that an organisation provide clarification as to why they have submitted a particular application, if they believe that it may not be eligible.

Alternative provision

25. Whilst it would appear that elected members are not eligible to apply for a Disclosure through the DBS, it is possible to get a basic disclosure from Disclosure Scotland. A basic disclosure, however, only includes unspent convictions and are available for anyone for a cost of £25. These can also be processed through Chorley Council as we are registered with Disclosure Scotland. Elected members are currently legally required to disclose all unspent convictions, and there would be no mechanism to enforce elected members to complete applications. It is unlikely that a certificate through Disclosure Scotland would hold the same gravitas as a DBS Disclosure certificate. Such disclosures would cost £25 per person.

Additional information regarding Chorley Council's Registered Body status

26. Chorley Council is a registered body for applying for Disclosures from the DBS (standard, enhanced and enhanced with barred lists check(s), however it is likely that the registration will be cancelled in November 2016 due to the insufficient number of disclosures being requested in any 12 month period. Under the Police Act 1997 (Criminal Records) (Registration) Regulations 2006 there is a minimum threshold requirement of 100 applications in any 12 month period which unfortunately we are currently falling short of. It is therefore likely that we would need to use an external organisation to undertake DBS disclosure applications on our behalf relating to employees and volunteers and initial discussions have taken place with an organisation to potentially undertake this. The same organisation is also ready to carry out DBS disclosure applications and other checks relating to taxi license applications. It would be unlikely that any pressure could be brought to bear with an external organisation where posts do not fall strictly within the defined legal criteria as being eligible for disclosures, as any impact upon their registered status would have serious implications for them.

IMPLICATIONS OF REPORT

27. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	X	Customer Services	
Human Resources	X	Equality and Diversity	
Legal		Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

28. There are no revenue implications if the recommendations are agreed. If the alternative is agreed the £25 per check will be managed from within existing budgets.

COMMENTS OF THE MONITORING OFFICER

29. The criteria in the legislation for applications for DBS checks are identified in the body of the report.
30. A contract is already in place between the Council and Cooke and Mellor Recruitment Limited trading as Personal Checks in respect of DBS checks for taxi drivers licensed by the Council.
31. Whilst members during their voluntary and other community roles may well come into more direct contact with vulnerable groups or children e.g. as school governors or with sports teams their role at the council is unlikely to involve the direct contact required for DBS disclosure.

CHRIS SINNONTT
DIRECTOR (POLICY AND GOVERNANCE)

Background Papers			
Document	Date	File	Place of Inspection
Home Office Revised Code of Practice for Disclosure and Barring Service Registered Persons	November 2015	Code of Practice for Disclosure and Barring Service Nov 15	Human Resources
Department for Education – Regulated activity in relation to children: scope	2012	Regulated activity in relation to children	Human Resources
Department of Health – Regulated activity (adults)	2012	Regulated activity adults	Human resources
Disclosure & Barring Service – A guide to eligibility for DBS checks	April 2016	DBS Guide to eligibility	Human Resources

Report Author	Ext	Date	Doc ID
Graeme Walmsley	5186	28 October 2016	T:\EMPLOYEE RESOURCING\Criminal Records Bureau\Admin\Elected members draft report.docx