

Report to: Audit and Governance Committee



Date of Meeting 18 November 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Councillor DBS checks

Report summary:

For members to consider the Council's position in relation to DBS checks and associated risks.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That members consider the report and decide on whether they want to make any recommendations in relation to DBS checks, including the Council paying for checks and / or lobbying Government. Members may also wish to consider making recommendations in relation to safeguarding training for councillors.

Reason for recommendation:

So Audit and Governance can consider the risks associated with Councillors undertaking DBS checks.

Officer: Henry Gordon Lennox, Strategic Lead (Governance & Licensing) and Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

[Cabinet 6th September 2017](#)

[Standards Committee 13th August 2019 item 6](#)

[Link to Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Report in full

DBS checks

1. In February 2017 a motion was considered at Council on the issue of safeguarding and the Council agreed that a further report should be presented in relation to the appropriateness of councillors being subject to DBS checks. The report was presented to Cabinet on September 2017 (the report can be accessed from the background links).
2. In very brief summary the report considered that there was no legitimate basis for members to be required to be subject to a standard or enhanced check, given that they are not carrying out a regulated activity nor is the role of councillor one of the specified roles that justify a check. While the possibility of a 'basic' check remained a possibility, in that there is no criteria to satisfy before being able to undertake one, concerns over data protection and human rights issues, when coupled with the limited benefit of a basic check, led to the conclusion that it was not appropriate for a blanket (mandatory) approach to having checks. The report concluded that members could be encouraged to undertake checks on a voluntary basis and the results published on the Council's website if the member wished. Cabinet resolved *'that the Council does not require councillors to have a basic criminal records check for the reasons detailed in the report but encourages them to do so voluntarily in the context of safeguarding vulnerable adults and children'*.
3. The 2017 Cabinet report was written in the context of looking at safeguarding children and vulnerable adults. In that sense, given the definition of 'regulated activity' (being the threshold that permits a standard or enhanced check outside of conducting a specified role), the functions of a district council and therein the role of its councillors, the risk associated with not having a check must be considered to be low. It is accepted that since the report was written COVID-19 has happened and there is a view that this might change the risk profile. From the district councillor perspective, the advice at the beginning of the pandemic was that as the Council was not directing the giving of any assistance – it was / is being offered in ward member / personal capacities – and given that the contact restrictions / social-distancing requirements meant that the threshold for a regulated activity being crossed would only likely arise where assistance was being given assisting vulnerable adults with their money / shopping, the view was that there continued to be no basis for requiring checks by the District Council. In reality the risk profile for the District Council was reduced due to the specific circumstances around COVID-19.
4. There has been no change to the legal framework in relation to DBS checks since the 2017 Cabinet report was written. The Data Protection legislation has been superseded by GDPR and more recently the Data Protection Act 2018 but the position regarding the approach to personal data (in the context of criminal checks) has not fundamentally changed. In addition, Devon County Council, having had the matter considered through its Audit and Procedures Committees, resolved *'that the Council adopt a policy of conducting a Basic DBS check for all Members of the Council, notwithstanding a Councillor may undertake certain roles which, in line with the legislation, required them to undergo an enhanced DBS check in relation to their contact with vulnerable adults or children or both or, is a member of a Committee which discharges a relevant function'*.

5. While at first glance the resolution appears to make the basic checking of county councillors mandatory, this is not actually the case. It is voluntary and members have to consent to the check being undertaken. It is understood that all of the county councillors have consented to having checks carried out, but should they not do so then that decision would be risked assessed and an appropriate position adopted. Following the decision at County, the matter was raised at our Standards Committee (on 13th August 2019) in terms of a verbal update on the number of councillors who have voluntarily undertaken the check and published the result. It was resolved that Cabinet be asked whether they wish to reconsider their previous recommendation for district councillors to only have voluntary DBS checks. The Standards Committee of 21 January 2020 noted, when approving the previous minutes, that Cabinet had confirmed that it did not wish to reconsider its previous recommendation for district councillors to only have voluntary DBS checks.
6. While it is noted above that there has been no change to the legal framework, there is currently a Private Members Bill - entitled the [Local Government \(Disqualification\) Bill](#) – working its way through the legislative procedure. This seeks to introduce additional disqualification criteria relating to being an elected councillor. The criteria generally relate to sexual offences and more specifically a ‘relevant notification requirement’ or ‘relevant order’ which are defined. If enacted (as currently drafted) a person who is subject to a relevant notification requirement or relevant order would not be able to be elected and would be disqualified if they became subject to one while holding office. This Bill is at the very early stages of the legislation making procedure.
7. The relevant Portfolio Holder has sought to engage the LGA on this matter. Contact to the Independent Office at the LGA led to this response;

‘In regards to your DBS query, the most helpful thing we were able to find was from Tendring which is quite thorough and refers to other councils taking the decision that DBS checks were not required for elected members -

<https://tdcdemocracy.tendringdc.gov.uk/documents/s30794/Minutes%20of%20Previous%20Meeting.pdf>’

8. While it is accepted that the public may consider it appropriate for members to be subject to checks and for the public to see this information or have the outcome revealed, the position remains as detailed in the previous report. In short, there is currently no basis to require a standard or enhanced check. The Council could require a basic check to be undertaken post-election to confirm that the declarations given on the election forms are correct. Should the Private Member’s Bill referred to above become law, this may justify the check becoming an enhanced check, although this has not been properly assessed at this time given the current status of the Bill. However this information could only be held by the Council (within Elections) and there would be no basis for publishing the outcome, unless the individuals consented. Therefore from the perspective of trying to give the public confidence, and separate from any requirement to confirm the election declaration, while the Council could resolve that all Councillors have a basic check, it could not actually compel this and as such it would necessarily remain voluntary as is currently the case. The same would be the case in relation to confirmation / publication of the outcome from anyone who consented to the check.
9. A basic check costs £23 per person. When the matter was considered previously and it was decided that it should be on a voluntary basis, there was no discussion about whether the Council would pay for the check. It was therefore left to individuals to pay for their own checks. To support a voluntary initiative and to encourage a wider uptake of being checked, members could consider recommending that the costs of undertaking a check is reimbursed through member’s expenses claims. This would necessitate a sum of £1380 being budgeted within the Members’ Expenses account.

10. It would not be unlawful for the Council to publish details of who has / has not had a check carried out, which the Council is paying for. It would be obtainable through the public's access to the accounts anyway. This information is in part essentially already available through the councillor pages of the website where you can see those councillors who have published their check. The information – so whether a check has been undertaken (and the date) or not – could be provided there, with the result published if the individual consents to it.
11. A concern has been raised over the publishing of the actual certificate online. From a data protection point of view there are no concerns in relation to this as the consent of the individual is given to it being published. Similarly, there is no restriction in relation to the legislation covering certificates that would preclude them being published provided the individual's consent is obtained. That said, Members may wish to consider that they do contain personal information, which has the risk of 'existing' on the internet for a significant period of time after it is no longer relevant or indeed after a councillor ceases to be a councillor, and so they may wish to consider redacting some of that information themselves before requesting that it is uploaded to the website.

Safeguarding training

12. At the September 2017 Cabinet meeting, members resolved that '*all Council Members receive or attend appropriate training in respect of our responsibilities in relation to protecting and safeguarding as detailed in related policies*'. Given the foregoing position, it is considered that this remains the most appropriate course of action to ensure that members understand their responsibilities and actions that can be taken where there are concerns. Members may therefore wish to make a recommendation to Cabinet / the Member Development Working Group as part of an upcoming piece of work around member training in relation to safeguarding. It should be noted that the Standards Committee will have considered – at its meeting of 9th September – whether to recommend to Council that safeguarding training should be mandatory for all Councillors.

Lobbying Government

13. Finally, the Committee may wish to consider whether there should be a recommendation regarding the lobbying of Government with a view to making some sort of DBS check mandatory for all district councillors. This would be with a view to giving the public confidence, although this only goes so far anyway (*cf* to the shortcoming identified in the 2017 Cabinet report).

Financial implications:

If members consider the cost of DBS check should be met by the Council then the report highlights a cost implication of £1,380.

Legal implications:

The legal implications are detailed in the report.
