

## **Draft Guidance Notes on Elected Members Disclosure Policy**

### **1. What is a criminal records check?**

A criminal records check is a process that results in the issue of a certificate that discloses information relating to a person's criminal record, if any. Depending on the type of check, a criminal records check may show information about an individual's criminal convictions, cautions, reprimands, warnings or other relevant information. The single source of criminal records checks is:

- DBS Disclosure checks available from the Disclosure and Barring Service (DBS)

### **2. What is a DBS check?**

These are criminal records check undertaken with the DBS. They involve a search of national and local police records and, in relevant cases, barred list information. A certificate is then issued by the DBS to the applicant who will in all cases be the individual to whom the check relates.

As a Registered Body with the DBS, the Council undertakes criminal records checks to establish the suitability of applicants to take up particular roles by reference to criminal convictions, cautions, reprimands, warnings or other relevant information. The Council will apply for and fund the check but it will be sent to the member concerned. There are four types of DBS checks that individuals or the Council can undertake:

#### **i) Basic Disclosure check**

A basic disclosure is a criminal records check undertaken through Disclosure and Barring Service and is available for any individual for any purpose. The basic check is a check an individual can request for themselves or be asked to undertake by their employer. The check provides details of convictions considered unspent under the Rehabilitation of Offenders Act 1974.

Ordinarily, Bristol City Council will request an individual to undertake a Basic Disclosure check for any roles that may have access to sensitive data such as health, education or social services records relating to children or vulnerable adults.

#### **ii) Standard check**

The standard check is available for prescribed duties, positions and licenses, for example, court officers, employment within a prison, and Security Industry Authority (SIA) licenses.

Standard checks are also available for those carrying out **Regulated Activity**, applying the '**saved**' definition – that is the definition that was used prior to the changes made by the Protection of Freedoms Act 2012.

Appendix 1 provides a summary of the definition of Regulated Activity following the changes made by the 2012 Act and Appendix 2 sets out the 'saved' definition of Regulated Activity insofar as it is relevant to Members and co-optees. Section 4 below provides further explanation on Regulated Activity.

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.

**iii) Enhanced DBS check (without a barred list check)**

Enhanced DBS checks are available for those carrying out '**saved**' **Regulated Activity**. They are also available for prescribed duties, positions and licences, for example, 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.

An enhanced level certificate contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the PNC which have not been filtered in line with legislation and also includes a check of information held locally by police forces.

**iv) Enhanced DBS check (with a barred list check)**

The enhanced check with barred list check(s) is only available for those individuals who are carrying out **Regulated Activity** (under the amended definition summarised at Appendix 1) and a small number of prescribed positions, for example, prospective adoptive parents and taxi and private hire vehicle licenses.

An enhanced level certificate with barred list check(s) contains the same PNC information and check of information held locally by police forces as an enhanced level check but in addition will check against the children's and/or adult's barred lists. Those who are considered unsuitable to work with children and/or vulnerable adults are placed on one or both of the two barred lists.

If an application includes a request to check the barred list(s) the DBS has a statutory duty to consider any information that suggests the applicant may pose a risk of harm.

**3. What criminal records checks can we obtain for Members?**

We can undertake Basic Disclosure checks on all Members. This includes all persons who are not elected Members but who are co-opted to any of the Council's Committees.

We can undertake Standard or Enhanced DBS checks (without a barred list check) on Members and substitutes who sit on certain committees or other forums where these meet the '*Saved*' definition of Regulated Activity.

We cannot undertake Enhanced DBS checks on Members that also include a check of either or both of the barred lists. The exception to this is where a Member or co-optee is or will be undertaking regulated activity under the revised definition in connection with their Council responsibilities. This situation is highly unlikely.

The check will be paid for by the Council but will be sent to the Member.

**4. What is Regulated Activity?**

There are two definitions of Regulated Activity that we need to be aware of:

- (i) The revised, narrower definition following the amendments made by the Protection of Freedoms Act 2012; and
- (ii) The saved definition that preserves the broader position in relation to Members as it was prior to the amendments made by the 2012 Act.

Under the revised, narrower definition, Regulated Activity covers the prescribed activities that a person might undertake with children, young people or vulnerable adults during which time the child, young person or vulnerable adult might be considered more vulnerable to abuse. Persons on either of the barred lists must not undertake regulated activity. There are different regulated activities prescribed in relation to children/young people and vulnerable adults. There is a summary of the revised definition of Regulated Activity at **Appendix 1**.

It is against the law for employers to employ someone or allow them to volunteer for work which is regulated activity if they know they are on one of the barred lists.

Under the saved definition of Regulated Activity, which is summarised at Appendix 2 insofar as is relevant, a Member or co-optee will be undertaking Regulated Activity if they discharge any education or social services functions, are a member of the Cabinet (as the Cabinet discharges education and social services functions), are a member of a committee or sub-committee of the Cabinet which discharges education or social services functions or are a member of an area committee *or any other committee or sub-committee of the Council* which discharges education or social services functions.

It is the responsibility of the Council to determine whether or not a position is in Regulated Activity and eligible for a check against one or both of the barred lists.

### **5. Are Members and co-optees in Regulated Activity?**

It is unlikely that any Members or co-optees will be within the amended definition of Regulated Activity in relation to their membership of a particular committee or Board.

Some Members' activities outside of their Member role bring them into Regulated Activity making them eligible for an Enhanced DBS check with a barred list check but this is not a matter for the Council.

Although changes were made to Regulated Activity by the Protection of Freedoms Act 2012 with the specified councillor roles being removed from the prescribed forms of Regulated Activity there is a saving in the related 2002 Regulations that allows enhanced DBS checks to still be undertaken on members who sit on the relevant committees or bodies.

### **6. Which Members will be eligible for a Standard or Enhanced DBS check?**

All Members and co-optees who are members or deputies of the following will be eligible for an Enhanced DBS check because of the functions these forums undertake.

These checks cannot include a check of either or both of the barred lists.

- Cabinet (all Portfolio Holders)
- Corporate Parenting Panel

- Guardianship Panel (Appeals Committee)

### **7. What does a criminal records check Certificate show?**

A clear disclosure certificate will confirm there is no record of any relevant information.

A positive disclosure certificate will contain details of cautions, convictions, reprimands, warnings or information held locally by police forces relating to the individual and the activities they may be or have been involved in.

More information about this can be found in the Council's *Criminal Records Disclosure Policy – Members*.

### **8. Who sees the Certificate?**

The certificate will be provided to the Member or co-optee, given that it is a personal application, but the Council's HR DBS Team will be notified by the Disclosure Service if there is a positive disclosure and notify the Monitoring Officer. If the disclosure result is positive, the Monitoring Officer will request sight of the certificate, and, in conjunction with the Executive Director: Care and Safeguarding, complete the risk assessment form.

### **9. What happens if a Certificate has disclosures on it?**

The Monitoring Officer and Executive Director; Care & Safeguarding will carry out a risk assessment to determine if the elected member can continue in the role.

The Council has a duty of care in respect of the protection of children, young people and vulnerable adults and will make a proportionate response to positive disclosures. Having a conviction or other positive disclosure will not necessarily exclude a Member from membership of a particular committee or Board.

### **10. How does a member obtain a a criminal records check?**

As a Registered Body with the DBS the Council undertakes criminal records checks via a secure on-line system (eBulk). This process is administered by the (TBC). When a check is required the (TBC) will make the necessary arrangements and provide the Member or co-optee with the information they need to make an application using the on-line facility. The Council will pay the fees direct.

### **11. How long do the results take?**

Basic Disclosure Certificates are usually issued within 14 working days of the application being received.

DBS Certificates are usually issued within four weeks of the application being submitted. Sometimes they are issued much quicker, within days. Very occasionally they can take longer than four weeks.

### **12. What happens to the information?**

Disclosure information is handled, used, stored, retained and disposed of in accordance with the relevant policies and procedures, and particularly having regard to the Council's data protection responsibilities.

### **13. How long is a criminal records certificate valid?**

A criminal records check has no official expiry date. Any information included will be accurate at the time the check was carried out. The Council will need to take a view in individual circumstances as to when a new check has to be undertaken.

A certificate will become invalid immediately conduct has occurred which would be disclosed if a new check was undertaken.

A basis disclosure check will be required for an elected member on election and re-election or where their duties change and may fall within one of areas where the Council requires a check to be undertaken.

For more information, please contact the HR DBS Team on (0117) 352 1400

## Appendix 1

### DEFINITION OF REGULATED ACTIVITY (SINCE 10 SEPTEMBER 2012)

Regulated Activity is work that a barred person must not do. It excludes any family arrangements and personal, non-commercial arrangements.

#### CHILDREN

Regulated Activity relating to **children** comprises in summary:

(i) Unsupervised Activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;

(ii) Work for a limited range of establishments ('specified places') with opportunity for contact, e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done:

- by the same person
- frequently(once a week or more often); or on 4 or more days in a 30-day
- period; or overnight

(iii) Relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;

(iv) Registered childminding; and foster-carers

An individual providing day to day management or supervision on a regular basis of a person in regulated activity is also in regulated activity.

#### ADULTS

Regulated Activity relating to **adults** - the focus is on the activities required by the adult, not on the setting, frequency, personal characteristics or circumstances of the adult requiring the activities. The following people (or anyone providing day to day management or supervision of those people) fall within the new definition:

(i) Any health care professional (or anyone under supervision of a health care professional) providing **health care** to an adult.

(ii) Anyone providing **personal care** because of an adult's age, illness or disability, relating to eating, drinking, going to the toilet, washing, bathing, getting dressed, care for mouth, skin, hair or nails.

(iii) A social care worker providing **social work** in connection with any health care or social services to an adult.

(iv) Anyone providing **assistance with cash, bills, and/or shopping** to an adult because of their age, illness or disability.

(v) Anyone providing **assistance in the conduct of a person's own affairs**.

(vi) Anyone **conveying** or who transports an adult because of their age, illness,

disability to receive health, personal or social care. This will not include family and friends or taxi drivers.

## **Appendix 2**

### **‘SAVED’ DEFINITION OF REGULATED ACTIVITY**

As far as is relevant to Council Members (or co-optees), the ‘saved’ definition of regulated activity, which still applies when considering eligibility for Standard and Enhanced Checks, is as follows:

#### **Children**

(a) they are a member of a local authority and discharges any education functions, or social services functions, of a local authority;

(b) they are a member of an executive of a local authority which discharges any such functions;

(c) they are a member of a committee of an executive of a local authority which discharges any such functions;

(d) they are a member of an area committee, or any other committee, of a local authority which discharges any such functions.

#### **Adults**

(a) they are a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to vulnerable adults;

(b) they are a member of an executive of a local authority which discharges any such functions;

(c) they are a member of a committee of an executive of a local authority which discharges any such functions;

(d) they are a member of an area committee, or any other committee, of a local authority which discharges any such functions.

The definitions are copied direct from the Safeguarding Vulnerable Groups Act 2006.

Even though amendments have been made to the definition of regulated activity by the 2012 Act, the above definitions still apply to Members, including co-optees.