

**Manchester City Council
Report for Resolution**

Report to: Standards Committee - 1 November 2018

Subject: Disclosure and Barring Service Checks for Elected and Co-opted Members

Report of: City Solicitor

Summary:

The purpose of the report is to enable the Standards Committees to consider whether Disclosure and Barring Service (“DBS”) checks should be undertaken for all elected and co-opted members and for the Standards Committee to make a recommendation to Council.

Recommendation:

The Standards Committee is requested to recommend to Council that it:

1. Continues to carry out enhanced DBS checks with a check of the barred lists of members who sit on the Fostering and Adoption Panels or who undertake regulation 44 inspections of children's homes (Option 2);
2. Undertakes enhanced DBS checks, with a check of the barred lists, for all other elected and co-opted members who undertake “saved” regulated activities, namely
 - a. members of the Executive;
 - b. members of the Health and Wellbeing Board;
 - c. members of the Children and Young People Scrutiny Committee; and
 - d. members of the Health Scrutiny Committee (Option 3).
3. Requests members to agree to basic disclosure checks (Option 4).
4. Council is requested to consider the recommendation of the Standards Committee and to make a decision on the options identified in this report.

Wards affected:

All

Financial considerations – Revenue: The cost of a basic check is £25
The cost of a standard check is £26
The cost of an enhanced check is £44.

Financial considerations - Capital None

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Background documents (available for public inspection):

None.

Implications for:

Anti Poverty	Equal Opportunities	Environment	Employment
No	No	No	No

1.0 Introduction

- 1.1 The decision whether to undertake Disclosure and Barring Service (“DBS”) checks of elected and co-opted members is a matter for each local authority to decide, having regard to DBS guidance.

2. Statutory Disqualification of Members

- 2.1 Members are advised that Section 80 of the Local Government Act 1972 already provides some safeguards by disqualifying individuals from standing for election or holding office if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months’ imprisonment (including a suspended sentence).

3. Background

- 3.1 The Council’s corporate parenting role for children and young people in public care depends upon ownership and leadership at a senior level, including members, and the embedding of that understanding throughout the Council’s workforce. We act upon our responsibility and monitor actions to ensure good parenting for all children and young people in our care, including safeguarding and promoting their education. The Care Act 2014 replaced the “No Secrets” guidance and placed safeguarding adults on a statutory basis promoting individual well-being, person centred care and support planning, duty to assess where an adult appears to need care and support, duty to assess carers who appear to have need for support and duty to pursue safeguarding enquiries.
- 3.2 The Safeguarding Vulnerable Groups Act (SVGA) 2006 was passed to help avoid harm, or risk of harm, by preventing people who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work. The Independent Safeguarding Authority (ISA) was established as a result of this Act. The explanatory notes to the Act provide that, broadly, controlled activity covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, including education and social services records.

4. The Disclosure and Barring Service

- 4.1 The Disclosure and Barring Service (DBS) helps organisations make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaced the Criminal Records Bureau (CRB) and ISA. Whilst maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults) the DBS carries out criminal record checks for specific positions, professions,

employment, offices, works and licences included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and those prescribed in the Police Act 1997 (Criminal Records) regulations. This would include members and other groups e.g. volunteers.

5. Regulated Activities since 10 September 2012

5.1 Changes introduced by the Protection of Freedoms Act 2012 (PFA) scaled back the number of activities, involving close work with children and adults that are regulated. These are known as “regulated activities.” Individuals on a barred list for children and/or adults cannot undertake a “regulated activity” and it is a criminal offence for the Council to allow an individual to do so without first checking whether they are on a barred list.

5.2 Examples of “regulated activity” include:

In relation to children

- being employed in a school, children’s home or childcare premises at least once a week;
- undertaking unsupervised activities with children at least once a week, such as teaching, caring for or supervising children, providing advice/guidance on well-being or driving a vehicle only for children;
- providing personal care, e.g. washing or dressing or health care;
- registered childminding or foster carers;
- a social worker.

In relation to adults

- a healthcare professional providing health care to an adult;
- anyone providing personal care to an adult, e.g. washing, getting dressed, going to the toilet;
- a social worker;
- anyone providing assistance with cash, bills or shopping to an adult because of their age, illness or disability;
- anyone providing assistance in the conduct of a person’s own affairs
- anyone conveying an adult, because of their age, illness or disability, to receive health, personal or social care. This does not include family and friends or taxi drivers.

5.3 Members generally do not have unsupervised contact with children or vulnerable adults as part of their role and therefore are unlikely to be involved in “regulated activity” as defined in the PFA which applies from 2012. However, members as a direct result of their position do meet in the community vulnerable families and are regularly provided with sensitive information and/or access to sensitive records about children and vulnerable adults, including education and social services records.

6. Saved Definition of Regulated Activity in relation to Members

6.1 In relation to elected members and co-optees the “saved” definition of regulated activity still applies when considering eligibility for standard and enhanced checks, and is as follows:

In relation to children

- the member discharges education or social services functions; or
- is a member of an executive which discharges any such functions;

In relation to adults

- the member discharges social services functions which relate wholly or mainly to adults who receive a health or social care service; or
- is a member of an executive which discharges any such functions.

6.2 The Council may therefore choose to undertake enhanced DBS checks of the following elected members, who undertake regulated activity:

- members of the Executive;
- members of the Children and Young People Scrutiny Committee;
- members of the Health and Wellbeing Board;
- members of the Health Scrutiny Committee;
- members who sit on the Fostering and Adoption Panel;
- members who undertake regulation 44 inspections of children's homes.

7. Basic Disclosure Checks

7.1 Any person may apply for a Basic Disclosure Check which provides details of any unspent convictions and conditional cautions. The guidance from the Disclosure and Barring Service however is that:

- the Council is only able to undertake a basic disclosure check of a member if it has the consent of that member;
- as part of the application process the member will be required to prove their identity with documentary evidence;
- the member may consent in advance that a clear basic disclosure certificate may be viewed by the Council;
- if the basic disclosure certificate reveals a conviction or conditional caution it will only be given to the member. However the Council is notified that the certificate reveals a conviction or conditional caution. This equally applies to an enhanced certificate revealing any concerning information. The information is only given to the member through production of the certificate. However the Council is notified that the certificate reveals any concerning information. In order to permit a thorough risk assessment to take place the member may choose to provide a copy of the disclosure certificate to the Council if they wish, but cannot be compelled to do so. In both circumstances the Chief Executive, advised by the Monitoring Officer, would raise the matter with the relevant Group Leader.

8. Options available

8.1 The following options are available to the Council:

8.2 Option 1 - To not carry out any DBS checks of members

Checking an individual's background would assist in determining whether appointing a member to a particular role may be less suitable for them in light of a relevant disclosure. In order to protect those who are most vulnerable in society it is proposed that this option be rejected; the Council may be open to criticism if it does not take reasonable steps to assess and mitigate the risk.

8.3 Option 2 – To maintain the status quo

This would involve carrying out enhanced DBS checks with a check of the barred lists of those elected members who sit on the Fostering and Adoption Panels or who undertake regulation 44 inspections of children's homes. Alongside compliance with statute on these activities, s11 of the Children Act 2004 places a statutory duty on key people and bodies, including local authorities, to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children. Agreeing this option would further the Council's compliance with this duty. It is proposed that this practice continues.

8.4 Option 3 - To carry out enhanced DBS checks, with a check of the barred lists, for all other elected and co-opted members who undertake "saved" regulated activities

8.5 Such members would be:

- members of the Executive;
- members of the Health and Wellbeing Board;
- members of the Children and Young People Scrutiny Committee; and
- members of the Health Scrutiny Committee.

8.6 Safeguarding children, young people and adults is a key priority for the Council in line with the Council's Corporate Parenting Responsibilities. The important role such members play in delivering and scrutinising these services and the arrangements that are put in place for these groups is recognised. Such members also have a wide range of responsibilities which may require them to access sensitive information about, or have contact with, vulnerable children and adults.

8.7 Enhanced DBS checks will also reveal basic information concerning any unspent convictions and cautions, police remands and warnings of each member and any additional information held by the local police that they reasonably consider to be relevant to the member's role. This information (which will already been known to the member) is useful to determine whether there are concerns under investigation locally which have not resulted in any

formal action. Any information provided may also help put details of any offence in context.

8.8 It is therefore recommended that this option is adopted.

8.9 **Option 4 – To carry out basic disclosure checks of all remaining members who do not undertake regulated activities**

8.10 Factors in favour of requesting all members agree to a basic disclosure check:

- Other members in other Councils have expressed a view that to have a check would create a layer of protection for them. Also, strengthening governance of the Council and public confidence in its elected members.
- There is an ongoing risk for the Council if, for any member, a safeguarding or positive disclosure issues arise in the future and the Council had not adopted a clear process on seeking to minimise against such issues.
- An elected member's constituency work regularly brings them in to unsupervised contact with vulnerable families. A basic disclosure check of all members therefore accords with the explanatory guidance to the legislation which has been created to avoid harm or risk of harm to vulnerable groups and includes the opportunity for access to sensitive records about children and vulnerable adult, including education and social services records. This in turn again strengthens public confidence.
- The Manchester Safeguarding Adults Board and Manchester Safeguarding Children's Board promotes and publicises "Trust Your Instincts." Whilst many agencies are working to promote the welfare of children and adults protecting vulnerable people from harm is everyone's responsibility. We all have a role to play as the eyes and ears of our city. The Care Act 2014 replaced the "No Secrets" guidance and placed safeguarding adults on a statutory basis. A basic disclosure check of all members therefore may strengthen public confidence.
- The Council is working with the Greater Manchester Combined Authority providing assurance that Manchester and Greater Manchester has the right culture and best possible systems in place to protect children from sexual exploitation. Public confidence has been shaken on many occasions in the public revelations of officials being involved in the harm of children and vulnerable adults. A basic disclosure check of all members therefore seeks to evidence public confidence that for the Council safeguarding to avoid harm or risk of harm is everyone's responsibility.
- To address concerns about proportionality, the Government has introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a basic disclosure check.
- If a conviction, or any other information of concern, is revealed by the disclosure check, the public may expect that this would lead to the

member being removed from a committee, the Executive or an outside body. However, the circumstances of each member must be judged on its individual merits, having regard to the nature of the conviction revealed or information of concern shared. In the event that a basic disclosure check reveals that a particular member has a conviction or discloses any other information of concern, then the Chief Executive, advised by the Monitoring Officer, may raise the matter with the relevant Group Leader. The Group Leader may then decide to direct that the member be removed from a Committee that the member is sitting on and/or request that the member be removed from an outside body to which the member had been appointed by Council. If the member is a member of the Executive, then the Executive Leader may dismiss the member from the Executive.

8.11 Factors against requesting all members agree to a basic disclosure check

- In the event that a basic disclosure check reveals that a particular member has a conviction or discloses information of concern, then, other than removing the member from a committee, the Executive or outside body, the Council will have limited power to introduce any other restrictions. The member may continue to come into contact with vulnerable groups during constituency work.
- A basic disclosure check result is only a snapshot of the position as it exists at the time the certificate is provided by the DBS. It is no guarantee of future good conduct. As time moves on from the date a clear certificate is issued, any reassurance it provides of good character is diminished.
- Just because an individual does not have a conviction or caution, the check does not in itself protect any child, young person or vulnerable adult. DBS checking does not detract from thorough and correct safeguarding procedures within the Council.
- To undertake a basic disclosure check of a member requires the member's consent and also each member to submit to the Council documentation to prove their identity and address (such as a passport and driving licence). The disclosure certificate will be sent to the member rather than the Council. The Council has no sanction available to it if a particular member refuses to provide identity documentation. The Council also has no sanction available to it if a particular member refuses to pass the disclosure certificate to the Council. In both circumstances the Chief Executive, advised by the Monitoring Officer, would raise the matter with the relevant Group Leader.
- A basic disclosure check costs £25. The cost of undertaking basic disclosure checks of all 96 members will therefore be £2,400 (less the costs of those members who have had enhanced DBS checks undertaken). The Council is however working towards use of the DBS Update Service which would permit any member with an existing DBS from a different organisation to be used (subject to it being the same

workforce groups and other certain minor conditions).

8.12 Recommendation in relation to requesting all members undertake a basic disclosure check

8.13 Having regard to the factors both in favour and against undertaking basic disclosure checks of all members, it is recommended that such checks are undertaken by the Council. The adoption of the proposal provides a sound means of mitigating any financial, political or reputational risk so far as reasonably practicable and, importantly, will contribute to the Council's discharge of its safeguarding duty.

9. Recommendation

The Standards Committee is requested to recommend to Council that it:

1. Continues to carry out enhanced DBS checks with a check of the barred lists of members who sit on the Fostering and Adoption Panels or who undertake regulation 44 inspections of children's homes (Option 2);
2. Undertakes enhanced DBS checks, with a check of the barred lists, for all other elected and co-opted members who undertake "saved" regulated activities, namely
 - a. members of the Executive;
 - b. members of the Health and Wellbeing Board;
 - c. members of the Children and Young People Scrutiny Committee; and
 - d. members of the Health Scrutiny Committee (Option 3).
3. Requests members to agree to basic disclosure checks (Option 4).
4. Council is requested to consider the recommendation of the Standards Committee and to make a decision on the options identified in this report.

Whilst a positive recommendation is provided, the purpose of this report is to present to the Committee the options available and for the Committee to determine the correct approach.