

**MEETING TITLE AND DATE:**

Councillor Conduct Committee  
17 September 2015

**REPORT OF: Andrew Fraser, Ray James, Bindi Nagra, Tony Theodoulou**

Directors of Schools and Children's Services; HHASC; Assistant Director; Assistant Director of Children's Services

<b>Agenda - Part:</b> 1	<b>Item:</b> 4
<b>Subject: DBS checks for members</b>	
<b>Wards: All</b>	
<b>Cabinet Member consulted:</b>	

Contact officer and telephone number:

Jill Bayley – [jill.bayley@enfield.gov.uk](mailto:jill.bayley@enfield.gov.uk)  
020 8379 6475

**1. EXECUTIVE SUMMARY**

1.1 This report reflects on the recent events in Rotherham and the publication of the most recent report by the Government led by Louise Casey (publication date 4th February 2015).

1.2 One of the concerns raised in the Casey report was that many Members had not had Disclosure and Barring Service (DBS) checks in their role as Members, even though they were eligible for the checks because of their position as Members.

1.3 Members, whose role as members gives them access to children or vulnerable adults, or information on these groups, are eligible to have enhanced DBS checks in their roles as elected members.

1.4 There is currently a high level of concern about child sexual exploitation and about suitable scrutiny of local authorities' roles in addressing it. It is essential for Enfield's reputation to ensure that all proper safeguards are in place around children and vulnerable adults.

1.5 In light of the serious concerns raised about appropriate DBS checks in Rotherham, it is recommended that we ensure that appropriate checks of Members are undertaken, and that a clear policy for obtaining and keeping records of DBS checks in appropriate cases is put into place.

**2. RECOMMENDATIONS**

2.1 It is recommended that the policy should require all Members of the Cabinet and Shadow Cabinet, all Members of any committee with a social

care function, whether relating to adults or children, all Members with any education function and the Mayor and Deputy Mayor to have current DBS checks.

### **3. BACKGROUND**

3.1 On 26 August 2014 the report of Professor Alexis Jay into child sexual exploitation (CSE) in Rotherham was published. This report found shocking evidence of sexual exploitation of at least 1400 children in Rotherham between 1997 and 2013. The report raised concerns about the role that members of Rotherham Council had played in the investigation of the abuse, and of related matters such as management of the children and young people's service and taxi licensing, as some of the abuse involved use of taxis to take children to places where they would be sexually exploited.

3.2 As a result of the Jay report, the Secretary of State appointed Louise Casey CB to inspect and report on Rotherham Council's exercise of its functions in the areas of governance, children and young people and taxi and private hire licensing. This report was published in February 2015.

3.3 The Casey report highlighted a wide variety of serious failings in all the areas considered. Most relevant to this report are the failures of governance, in particular around appropriate checks on members.

3.4 The Casey report notes (page 79) that 'very few Councillors had been checked in the role of "councillor" or "elected member"...there has been no historic, systematic checking of members who had access to vulnerable children'.

3.5 Currently in Enfield DBS checks are undertaken on Members in the following positions:

- Members of Adoption Panel
- Members of Fostering Panel
- Cabinet members for Culture, Sport, Youth and Public Health, and for Culture and Leisure had DBS checks until recent changes; currently the Cabinet Member for Education, Children's Services and Protection has a DBS check

3.6 At present, no Members sit on panels considering vulnerable adults cases.

3.7 Human Resources (HR) undertake DBS checks of relevant Members on request from the appropriate committee or panel administrator. The checks obtained are enhanced disclosure checks and cost £49.00 each. At present central files on Members are being set up which will include information on DBS checks. It is recommended that a policy should be considered to establish which Members should have DBS checks and in what circumstances, including when further checks would be required.

3.8 Local authorities do not seem to have a uniform approach to DBS checks. Having undertaken some benchmarking with other Local Authorities it appears that some undertake blanket checks of all Members. Legally, this may only be justified if all Members have a role in discharging education or social services functions relating to children or vulnerable adults (see 3.10-3.11 below). A more common approach was for DBS checks to be undertaken only for Members who can clearly be shown to be eligible because of discharging education or social services functions.

3.9 A draft policy is attached for consideration in Appendix 1.

3.10 The Police Act 1997 (Criminal Records) Regulations 2002 set out the circumstances in which a request for an enhanced criminal record certificate may be made. These include considering the applicant's suitability to engage in 'regulated activity relating to children' and considering the applicant's suitability to exercise defined functions relating to vulnerable adults.

3.11 The activity or functions referred to include someone who fulfils the following criteria:

- A member of a local authority and discharges any education functions, or social services functions (relating to children, or adults receiving a health or social care service), of a local authority
- A member of an executive of a local authority which discharges any such functions
- A member of a committee of an executive of a local authority which discharges any such functions
- A member of an area committee or any other committee of a local authority which discharges any such functions

3.12 As serious concerns have been raised about governance in Rotherham Council, including the lack of appropriate DBS checks for members, it would be in Enfield's best interests to ensure that appropriate checks of Members are undertaken, and that a clear policy for obtaining and keeping records of DBS checks in appropriate cases is put into place. This policy should also set out the procedure to be followed if a DBS check reveals any matters of concern.

3.13 As at May 2015 the list of relevant committees and Panels is believed to be as follows:

- Overview & Scrutiny (which has standing items on Children's Services)
- Adoption Panel
- Corporate Parenting Panel
- Fostering Panel
- Joint Consultative Group for Teachers and Staff Forum – also known as the "Staff Forum"
- Member Governor Forum
- Schools Forum
- Standing Advisory Council for Religious Education
- Learning Difficulties Partnership Board
- Child Sexual Exploitation task group
- Deaf Community Forum
- Local Safeguarding Children Board
- Enfield Targeted Youth Engagement Board
- Children with Disabilities Partnership Board
- Children's Services Risk Management Panel

3.14 It is recommended that the policy should require all Members of the Cabinet and Shadow Cabinet, all Members of any committee with a function relating to children or vulnerable adults or education, all Members with any education function and the Mayor and Deputy Mayor to have DBS checks.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 One option considered was whether it would be appropriate to require all 63 Members to have DBS checks. This option was rejected because the circumstances in which a person is eligible for a DBS check are limited, and it would be unlawful to seek a DBS check on a person who is not eligible for a check. In the case of Members, it is only lawful for DBS checks as Members to be sought where their role as Members fulfils the criteria as set out in 3.10 and 3.11 above. The current structure of governance and Members' areas of responsibility in Enfield means that only some Members appear to fulfil these criteria and therefore only some Members are legally eligible for DBS checks to be undertaken.

4.2 Do nothing – this would leave Enfield at risk of damage to reputation in light of the serious current concerns about governance raised in Rotherham.

#### **5. REASONS FOR RECOMMENDATIONS**

5.1 There is currently heightened interest in ensuring that councils act appropriately to ensure that the failures of practice and governance identified in Rotherham are not repeated elsewhere. One of the failures identified in Rotherham was in ensuring that appropriate DBS checks had been undertaken of Members with responsibility for children by virtue of their role as members. It is proposed that a clear policy should be in place in Enfield.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

All costs associated with the DBS checks can be found from within existing budgets.

##### **6.2 Legal Implications**

Section 113B (2) (b) of the Police Act 1997 requires the Disclosure and Barring Service (DBS) to issue an enhanced criminal record certificate in certain circumstances, where the certificate is required for a prescribed purpose. Prescribed purposes include establishing the applicant's suitability to carry out the following positions, in relation to both adults and children:

- A member of a local authority and discharges any education functions, or social services functions (relating to children, or adults receiving a health or social care service), of a local authority
- A member of an executive of a local authority which discharges any such functions
- A member of a committee of an executive of a local authority which discharges any such functions
- A member of an area committee or any other committee of a local authority which discharges any such functions

The proposals set out in this report comply with the above legislation.

A clear policy on appropriate checks on members with access to information on children and vulnerable adults will reduce the risk of litigation and damage to Enfield's reputation.

### **6.3 Property Implications**

None

## **7. KEY RISKS**

Although Enfield has not experienced the same difficulties as Rotherham, in order to avoid potential criticism or negative perception of Enfield it is vital that the criticisms levelled at Rotherham are taken on board. One of the key criticisms made of Rotherham was that an appropriately rigorous policy on DBS checks of Members had not been adopted. By adopting and implementing a lawful and rigorous policy on DBS checks for Members the risk of damage to Enfield's reputation on this count is greatly reduced.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The proposals set out in this report will ensure that children and vulnerable adults receive a safe service from Enfield, and that Enfield can demonstrate that the Council has taken all appropriate precautions.

### **8.2 Growth and Sustainability**

See above.

### **8.3 Strong Communities**

See above.

## **9. EQUALITIES IMPACT IMPLICATIONS**

None.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

None.

## **11. HEALTH AND SAFETY IMPLICATIONS**

## **12. HR IMPLICATIONS**

Human Resources will continue to administer DBS checks within existing resources for Councillors who meet the DBS criteria for a Disclosure Application.

The Democratic Services Team will, at the start of each municipal year, at the point of a change of membership and at the point any new body is incorporated, work with colleagues in relevant council departments in identifying which committees (in addition to Cabinet and Shadow Cabinet) deal with social care and

/ or education functions and will then notify Human Resources of the names of the relevant Councillors to ensure that up to date DBS checks are in place.

### **13. PUBLIC HEALTH IMPLICATIONS**

None.

#### **Background Papers**

See Appendix 1

**Appendix 1**  
**Draft policy – DBS checks for Members**

1. A clear DBS check is a requirement for all Members of the Cabinet and Shadow Cabinet, all Members of any committee with a function relating to children or vulnerable adults or education, all Members with any education function and the Mayor and Deputy Mayor, except in the circumstances set out in (6) below.
2. All Members fulfilling the functions set out in (1) above are required to apply for DBS checks and supply all relevant documentation within 14 days from their appointment unless the Member is already fulfilling such functions and already has or has applied for a DBS check.
3. If a Member's DBS check comes back not clear s/he would be unable to fulfil any of the functions set out in (1) above with immediate effect from the date of receipt of the DBS check.
4. If the Member whose DBS check is not clear wishes to continue to fulfil the function set out in (1) above, the Member may ask for the Monitoring Officer to approve an exception to the Policy.
5. The Member may make representations orally or in writing to the Monitoring Officer. The Monitoring Officer will consult the relevant Director before reaching a final decision.
6. If the Monitoring Officer is satisfied that an exception may be made s/he will provide written authority to that effect which will be placed on the Member's file. Once the written authority has been received by HR the Member may fulfil the functions set out in (1) above.
7. A Member who refuses or fails to apply for a DBS check within 14 days of their appointment to a function set out in (1) above is ineligible to fulfil the functions set out in (1) above.
8. If a Member applies for a DBS check and provides the correct documentation to support an application, but for any reason DBS does not process the application, the Member shall be deemed to have a clear DBS check until any DBS check is received.
9. The detail of all DBS checks and the contents of any discussions between the Member, the Monitoring Officer and/or the relevant Director concerning the outcomes of DBS checks shall remain confidential.