

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

5 NOVEMBER 2009

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

CABINET/COUNCIL DECISION/

Corporate Management and Finance – Lead Cabinet Member – Councillor Laing

CRIMINAL RECORDS BUREAU CHECKS FOR ELECTED MEMBERS AND CO-OPTees AND THE NEW VETTING AND BARRING SCHEME

1. Summary

To obtain Cabinet's approval to the proposed arrangements for relevant elected members and co-optees to undertake CRB checks within 28 days of their election or appointment to the Council and on a three yearly basis.

To provide initial details of the proposed vetting and barring scheme.

2. Recommendations

It is recommended to Council that:-

- a. CRB checking is extended to all relevant Members;
- b. All Members who are not the subject of an existing valid CRB check undertaken in connection with their role with the Council, should be vetted (as relevant Members);
- c. Subject to this, CRB checks should be applied for within 28 days of the Council's decision to approve the proposed vetting arrangements and that new Members be required to apply for a check within 28 days of their election or appointment to a regulated position, whichever is the earlier;
- d. The level of disclosure applied for is to be enhanced rather than standard; and
- e. The procedures for applying for and checking of disclosures, as outlined in paragraphs 22, 23 and 25 of the report be agreed.

3. Reasons for the Recommendations

To assist in fulfilling the Council's duty in relation to the safeguarding of children and vulnerable adults.

4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

AGENDA ITEM

REPORT TO CABINET

5 NOVEMBER 2009

REPORT OF CORPORATE MANAGEMENT TEAM

CRIMINAL RECORDS BUREAU CHECKS FOR ELECTED MEMBERS AND CO-OPTEEES AND THE NEW VETTING AND BARRING SCHEME

SUMMARY

To obtain Cabinet's approval to the proposed arrangements for relevant elected members and co-optees to undertake CRB checks within 28 days of their election or appointment to the Council and on a three yearly basis.

To provide initial details of the proposed vetting and barring scheme.

RECOMMENDATIONS

It is recommended to Council that:-

- a. CRB checking is extended to all relevant Members;
- b. All Members who are not the subject of an existing valid CRB check undertaken in connection with their role with the Council, should be vetted (as relevant Members);
- c. Subject to this, CRB checks should be applied for within 28 days of the Council's decision to approve the proposed vetting arrangements and that new Members be required to apply for a check within 28 days of their election or appointment to a regulated position, whichever is the earlier;
- d. The level of disclosure applied for is to be enhanced rather than standard; and
- e. The procedures for applying for and checking of disclosures, as outlined in paragraphs 22, 23 and 25 of the report be agreed.

DETAIL

1. The Council has a public duty in relation to the safeguarding of children and vulnerable adults, which demands that both officers and members who work in close proximity to, or may visit anyone who might fall into these vulnerable groups, are appropriately vetted.
2. Currently the Council's policy for CRB checks which are one way of establishing the suitability of individuals in positions of trust, applies only to employees.
3. As a principle, it is considered that CRB checks should also be extended to elected members and to co-optees (together referred to as "Members")

4. Regulated Positions

5. Under the Criminal Justice and Court Services Act 2000, it is an offence for a person who has been disqualified from working with children to be employed in a “regulated” position.
6. In addition, it is an offence knowingly to offer work in a regulated position to someone who is disqualified from working with children.
7. Regulated positions include being a member of a “relevant local government body”. This means individuals (members) who:-
 - discharge education or social service functions as an individual e.g. the Cabinet Members for Children and Young People, and Adult Services and Health.
 - are members of an executive of a council which discharges such functions i.e. all cabinet members.
 - are members of a Committee which discharges such functions i.e. all members (including co-optees) on the Corporate Adults Services and Social Inclusion, Children and Young People, and Health Select Committees and the Education Support Panel.
 - Conduct inspection visits to social care establishments
8. The positions outlined are regulated, and the legislation applies whether or not a relevant member has contact with children or other vulnerable people.
9. Unless “relevant” members are CRB checked, the Council runs the risk of prosecution if it emerges that a disqualified person is discharging education or social services functions in a regulated position (unless it is able to establish that it did not knowingly offer such “work”). The member concerned also risks prosecution as well.

Relevant Members

10. In view of the above, it is proposed to require the following “relevant” members to be CRB checked:-

All Cabinet Members

All members of the Corporate, Adult Services and Social Inclusion, Children and Young People and Health Select Committees and the Education Support Panel.

All members who undertake inspection visits to social care establishments.
10. Other members who substitute for any of the members specified at paragraph 9 should also be required to be checked, and should not be able to substitute unless they have been checked.
11. It is also considered reasonable for members who sit on other bodies, which have links to education or social services functions, to be CRB checked. This would, for instance, cover the Childrens Trust and the Community Safety Partnership.

12. The Mayor and Deputy Mayor should also be CRB checked, given the nature of the events which they attend eg involving schools and school children and vulnerable adults.
13. In addition, members who hold young peoples' ward surgeries or otherwise have contact with children or other vulnerable people, should be CRB checked by the authority.
14. All members are, of course, corporate parents and have signed the corporate parents pledge to (amongst other things) "take responsibility for working collaboratively to support children and young people in public care and care leavers to ensure" they are enabled "to reach their potential emotionally, educationally, physically, psychologically and socially."
15. In view of this, it is considered that Members not covered by any of the categories outlined in paragraphs 9 to 13, should nonetheless be CRB checked in light of their role as corporate parents.

Frequency of CRB Checks

16. It is proposed that all Members, who are not the subject of an existing, valid check in connection with their roles with the Council, apply for a CRB check within 28 days of the proposed vetting arrangements being agreed by Council.
17. New Members will be required to apply for a check within 28 days of their election or appointment to a regulated position, whichever is the earlier.
18. All relevant Members will be required to be rechecked on a three yearly basis.

Criminal Records Bureau

19. The CRB is the central access point for checks on regulated positions/relevant members. It makes the checks in return for a fee.
20. The levels of disclosure are: -
 - (a) **Standard Disclosures** - for positions that involve regular contact with those aged under 18, or people of all ages who may be vulnerable for other reasons. They may also be relevant for people involved in certain other sensitive areas and professions. The disclosure will contain details of ALL convictions on record including current and spent convictions (i.e. those that happened some time ago and are defined as spent under the Rehabilitation of Offenders Act). In addition, they include details of any cautions, reprimands or warnings held on the police national computer.
 - (b) **Enhanced Disclosures** - are for posts involving greater contact with children or vulnerable adults. Such work might involve regularly caring for, training, supervising or being in sole charge of such people. As well as the information that would be on a Standard Disclosure for work involving regular contact with children, enhanced disclosures may also contain information that is held locally by the police including relevant non-conviction information.
21. From 12 October a Standard Disclosure certificate will only reveal information held on the police national computer. It will no longer include a check on the three

previous lists (POCA; POVA and List 99). In view of this it is proposed to undertake enhanced disclosure checks in relation to relevant Members.

Checking Procedures

22. It is proposed that:-

- A countersignatory in Democratic Services (Head of Democratic Services) or authorised representative will issue CRB application forms to relevant Members.
- The forms, with relevant documentary evidence, will be returned to and considered by the countersignatory
- The countersignatory will send the completed forms to the CRB
- Disclosure certificates will be sent by the CRB direct to the relevant Member and a copy will be sent to the countersignatory.
- Where a disclosure shows no convictions, or matters of concern, a file note will be made confirming that the relevant Member is eligible to (continue to) hold a regulated position, based on the CRB clearance.
- A copy of the note will be sent to the relevant Member.

Banned from Working with Children

23. Where a disclosure reveals convictions or other information which carry an automatic ban from working with children, the Countersignatory will notify the Director of Law and Democracy will immediately inform the Chief Executive (or authorized representative) and the relevant Group Leader (or Deputy Leader) so that the disqualified member can be removed immediately from the regulated position. In the case of a co-opted member, that member will be informed direct that they have been removed with immediate effect, from the relevant regulated position.

24. Details of information/convictions carrying an automatic ban are attached as an **Appendix**.

No Automatic Ban

25. Where a disclosure shows convictions or other information which do not carry an automatic ban from working with children, the following action is proposed:-

- The countersignatory will notify the Director of Law and Democracy (DOLD)
- DOLD will arrange a meeting with the relevant member and other senior officers (the Chief Executive and/or relevant Corporate Director(s) or their authorised representatives) taking such advice as is considered necessary from other appropriate officers.
- The relevant member will be entitled to bring their Group Leader or Deputy Leader or other representative to the meeting.

- The outcome of the meeting will be recorded and a copy of the record will be provided to the member within five working days.
- Following the meeting a decision will be made by the Chief Executive or authorised representative whether to allow the relevant member to continue to hold a regulated position or to ask the relevant Group Leader to remove them from the regulated position.
- Where co-opted members are involved, the Chief Executive, or authorised representative, will decide whether the person concerned should continue to hold the regulated position or be removed from that position.
- When a decision has been made a file note will be prepared by DOLD confirming the decision and a copy will be sent to the relevant member.

New Vetting and Barring Scheme

26. Commencing on 12 October 2009 a new vetting and barring scheme (VBS) is now being introduced under the Safeguarding Vulnerable Groups Act 2006. The scheme will provide additional safeguards over and above those under the current CRB regime.
27. The VBS reforms the current vetting and barring practices, creating a single list of those barred from working with children and a single list of those barred from working with vulnerable adults. These lists replace the List 99, POCA and POVA lists. Standard CRB disclosures will not now include a check of these lists. Enhanced disclosures will however include a check of the two new lists.
28. Existing safeguarding measures also now include a wider range of roles and responsibilities which will be classed as regulated activity.
29. Within the list of office holders who will be deemed to be engaging in regulated activity will be a member of a relevant local government body, a Chief Executive as well as a director of childrens services, a director of adult services and a member of a local safeguarding children board.
30. Those undertaking regulated activity will be required to apply and be registered with the Independent Safeguarding Authority (taking over the Secretary of State's current responsibilities under POCA, POVA and List 99 Schemes). This will be introduced in phases starting in July 2010.
31. As regards members those who will have to be checked/registered will be a person who is:-
 - (a) a member of a local authority and discharges any education functions, or social services functions, of a local authority;
 - (b) a member of an executive of a local authority which discharges any such functions;
 - (c) a member of a committee of an executive of a local authority which discharges any such functions;

- (d) a member of an area committee, or any other committee, of a local authority which discharges any such functions.
32. There will also be requirements under the legislation to provide information to an Independent Barring Board and/or the Secretary of State and an offence for failing to do so.
33. The Council's regulatory arrangements will be applied subject to and in accordance with such legislation and guidance.

FINANCIAL AND LEGAL IMPLICATIONS

Financial Implications

34. The fees for CRB checks for Members will be met from existing budgetary provision.

Legal Implications

35. Risks of prosecution will arise for both the authority and individual Members if CRB checks of relevant members are not carried out. Similar risks arise in the context of the VBS proposals.

RISK ASSESSMENT

36. The risks identified in paragraph 35 will be ameliorated by appropriate CRB and VBS checks being made where necessary, and are classed as low to medium in nature.

EQUALITY IMPACT ASSESSMENT

37. In view of the nature of the proposals an assessment is not considered to be necessary.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

38. Children and Young People and Older Adults.

CONSULTATION

39. The report has been the subject of consultation with the Head of Democratic Services, Human Resources, the Corporate Director of Children and Social Care and the Corporate Management Team and the Members Advisory Panel, who have all approved the proposals and related procedures.

Name of Contact Officer: David Bond
Telephone No: 01642 527060
Email Address: david.bond@stockton.gov.uk

<u>Background Papers</u>	N/A
<u>Ward(s) and Ward Councillors</u>	N/A
<u>Property</u>	N/A

People Banned from Working with Children. The term working with children covers the regulated positions mentioned in the report.

Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000 a number of people are banned from working with children. They are:-

1. People on DfES List 99
2. People on DoH list
3. People on the National Assembly of Wales list
4. People aged 18 or over convicted of certain specified offences against those aged 18 or under (or 16 in some instances) and given a hospital or guardianship order or a custodial sentence of 12 months or more. Suspended sentences of 12 months or more are treated as qualifying sentences.

The specified offences are:-

- Murder and manslaughter
- Rape and burglary with intent to commit rape
- Grievous bodily harm
- Cruelty to children
- Kidnapping, false imprisonment and abduction
- Indecent assault on a man or a woman
- Sexual intercourse with a child under 13
- Intercourse with a girl aged between 13 and 16
- Buggery with a child under 16
- Indecency between men
- Abuse of trust
 - Incest and related offences
 - Assault with intent to commit buggery
 - Indecency with children under the age of 14
 - Offences relating to or encouraging children prostitution
 - Offences relating to child pornography