

Council Meeting	
Meeting Date	2 October 2024
Report Title	Elected Members DBS Proposal
DMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods
Head of Service	Charlotte Hudson, Head of Housing and Communities
Lead Officer	Steph Curtis, Community Services Manager
Classification	Open
Recommendations	<p>For Council to agree to introduce basic DBS Checks for elected Members, at the time of their election until the point that their appointment ceases (and for current Members, at the point of approval of this proposal by Council); and that for Members with an existing, relevant DBS check that this can be used as part of this process.</p> <p>For Council to agree that the Chief Executive, in conjunction with the Leader and support from the Monitoring Officer, to manage the process for failure to complete DBS checks and if the check did reveal an offence.</p>

1 Purpose of Report and Executive Summary

- 1.1 This report discusses proposals to introduce DBS Checks for Members following a request from the Housing and Health Committee on 5th March 2024; and agreement from Standards Committee on the 11th July 2024.

2 Background

- 2.1 At the Housing and Health Committee on the 5th March 2024, as part of the item on the revised Safeguarding Policy, an elected member posed the question to ask why elected members do not currently have DBS checks as part of their role. Following the discussion, it was agreed that officers would take this away to review.
- 2.2 Section 27 of the Localism Act 2011 requires local authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. There is currently no statutory requirement or policy in place for DBS checks for councillors. There is potential that the public may be at risk if a councillor has a serious conviction that the Council is not aware of. There may be a reputational risk to the Council if a councillor is found to have a criminal conviction/s. However, candidates for election to local government must declare they are not disqualified from standing using prescribed 'Consent to Nomination'

forms at nomination. It is a criminal offence to make a false statement on nomination papers.

- 2.3 The Local Government (Disqualification) Act 2022 (“the 2022 Act”) introduced new grounds on which a person is disqualified from being elected to, or holding, certain positions in local government in England, including the position of councillor. This new disqualification criteria explicitly disqualifies individuals who are subject to the relevant notification requirements or orders due to sexual offences from standing or remaining in office.
- 2.4 Levels of DBS Checks that can be submitted depends on the role that is being carried out and whether it is ‘Regulated Activity’ as set out in the Safeguarding Vulnerable Groups Act (SVGA). These relate to certain types of activities and interactions with children and vulnerable groups. In relation to elected Member activities, the SVGA states that they would be undertaking regulated activity if they: (a) discharge, as a result of their membership, any education or social services functions of the Council; (b) are a Cabinet Member (and the cabinet discharges education and social services functions); are a member of a committee of the Cabinet or (c) they are a member of a committee of the Council which discharges education or social services functions.
- 2.5 The duties of Swale Borough Councillors mean that a standard or enhanced DBS check cannot legally be undertaken. Swale Borough Councillors could however be required to undertake a Basic DBS check as a requirement under DBS Checks for Members Protocol. A basic DBS shows any ‘unspent convictions’ a person may have and a conviction record at a point in time, so there is no set time that it lasts for. Individuals can apply for a Basic Disclosure themselves.
- 2.6 There is no unified approach to councillor DBS checks nationally. Research has shown a mixture of Councils at a district or county level having introduced DBS checks. Medway Council recently agreed to introduce enhanced DBS checks for those that are appointed to relevant member bodies/committees, including any substitutes. Kent County Council do not have an official policy in place, but established practice sees all Councillors subject to an enhanced DBS check at the point of election.
- 2.7 Introducing a voluntary process for all elected Members (with the support of group leaders) to complete a basic DBS check would ensure that SBC is fully aware of any convictions that affect the suitability of a councillor to work in the public domain and could bring the council into disrepute. It would also provide added assurance that the Council is committed to promoting high standards.
- 2.8 In the event that a DBS check did reveal an offence, the Chief Executive and the Council Leader would need to consider next steps, with support from the Monitoring Officer. This would ensure confidentiality is maintained at all levels. This would not mean an automatic disqualification from being an elected member, but mitigations and any risks would need to be assessed and managed, including the below to be factored in:

- (i) the significance and/or severity of the offence,
 - (ii) the amount of time that has elapsed since the date of the conviction,
 - (iii) whether public confidence in the position held by Elected Member in question could be adversely affected, and if so, to what extent,
 - (iv) The potential reputational harm (if any) that could impact upon the Council
- 2.9 A committed resource has been agreed to ensure a checking and verification process is utilised to support elected members to comply with the process.
- 2.10 If an elected Member failed to comply with this requirement, the Standards Committee would work with Group leaders with support from the Monitoring Officer to agree next steps.
- 2.11 It is recognised that a DBS check is only valid on the day that it is provided, and circumstance may change at any time. Officers will work with the Political Groups to ensure Elected Members understand that they have an obligation to declare any criminal offences/convictions (other than minor offences such as traffic offences) to the Monitoring Officer as soon as reasonable practicable.
- 2.12 An annual report will be presented at Standards Committee for compliance levels for each political party.
- 2.13 This proposal was discussed by the Standards Committee at their meeting in July 2024. It was agreed that the proposal should be put forward to Council for adoption, with all members undertaking a basic DBS check at the time of their appointment, until it ceases. As we are part way through a civic cycle, it was agreed that for existing Members, this check should be completed following agreement from Council to this proposal. It was also felt appropriate that if a Member has an existing, relevant DBS in place, evidence of this can be shared with Democratic Services.

3 Proposals

- 3.1 For Council to agree to introduce basic DBS Checks for elected Members, at the time of their election until the point that their appointment ceases (and for current Members, at the point of approval of this proposal by Council); and that for Members with an existing, relevant DBS check that this can be used as part of this process.
- 3.2 For Council to agree that the Chief Executive, in conjunction with the Leader and support from the Monitoring Officer, to manage the process for failure to complete DBS checks and if the check did reveal an offence.

4 Alternative Options

- 4.1 That basic DBS checks are not introduced for Members: some Members may consider such checks to be an invasion of their privacy if there is no legal duty to

have them in place. However, it is felt that the community could be at risk if there are undeclared convictions by an elected Member; and the Council could be brought into disrepute if convictions are identified after a councillor has been elected.

5 Consultation Undertaken or Proposed

5.1 No consultation has currently been undertaken.

6 Implications

Issue	Implications
Corporate Plan	This proposal contributes to the community 'enabling our residents to live, work and enjoy their time safely' priority and the running the council priority.
Financial, Resource and Property	<p>The current cost of a Basic DBS check is £18. There are 47 councillors. This would cost the council £846.00 every four years. There will be additional costs if new councillors are elected following by-elections.</p> <p>There are also the costs of staff time connected with managing the process – this will include viewing certificates and recording the outcome. There will be additional staff time required if there are any compliance issues or if a check does reveal an offence.</p>
Legal, Statutory and Procurement	<p>Local Government (Disqualification) Act 2022 and the Localism Act 2011 are discussed in the main body of this report.</p> <p>The Kent and Medway Adult Safeguarding Policy has also introduced the People in Position of Trust (PIPOT) policy which is referenced within the Swale Safeguarding Policy.</p> <p>Other relevant legislation linked to this proposal are the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, and the Police Act 1997 (Criminal Records) Regulations 2002.</p>
Crime and Disorder	Compliance with this proposal would see a reduction in risk of any criminal convictions arising from SBC elected members.
Environment and Climate/Ecological Emergency	There are no impacts on sustainability or climate change issues.
Health and Wellbeing	If there are no conflicts with compliance this should not have any impact on the health and wellbeing of any elected member

Safeguarding of Children, Young People and Vulnerable Adults	There is potential that the public may be at risk if a councillor has a serious conviction that the Council is not aware of. There may be a reputational risk to the Council if a councillor is found to have a criminal conviction.
Risk Management and Health and Safety	The implementation of this requirement would see a reduction in risk to wider community of Swale for an individual who has undeclared convictions which may put those at risk within certain categories within SVGA.
Equality and Diversity	No specific equality and diversity implications have been identified at this stage.
Privacy and Data Protection	The Council will maintain a record of Members who have produced their basic DBS checks to the Officer appointed by the Monitoring Officer. Only the completion date and if any convictions are produced will be recorded.

7 Appendices

None

8 Background Papers

Housing and Health Committee Minutes 5th March 2024 -

<https://services.swale.gov.uk/meetings/ieListDocuments.aspx?CId=357&MId=3976&Ver=4>

Standards Committee Minutes 11th July 2024 –

<https://services.swale.gov.uk/meetings/documents/g4163/Printed%20minutes%20Thursday%2011-Jul-2024%2019.00%20Standards%20Committee.pdf?T=1>