

FLINTSHIRE COUNTY COUNCIL

REPORT TO: DEMOCRATIC SERVICES COMMITTEE

DATE: WEDNESDAY, 24 OCTOBER 2012

REPORT BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

SUBJECT: CRIMINAL RECORDS BUREAU CHECKS FOR COUNCILLORS

1.00 PURPOSE OF REPORT

1.01 To agree a policy on checking the criminal records of councillors and other members.

2.00 BACKGROUND

2.01 Historically, it has been custom and practice for the Council to carryout criminal record bureau (CRB) checks on all members. Recently, the CRB has been increasingly reluctant to carryout checks on councillors. This is because:-

- records of criminal convictions are sensitive personal data under the Data Protection Act; and
- under the Rehabilitation of Offenders Act it is expected that old offences will be disregarded so that people with convictions are able to make a new life for themselves should they wish to reform.

This reluctance by the CRB has meant, for example, in Denbighshire that the CRB would only provide checks on councillors who are also school governors.

2.02 Central government believe that too wide a use has been made of CRB checks as well. It has taken steps under the Protection of Freedoms Act 2012 to restrict the categories of employees where criminal checks can be made. However, it has done nothing to change the law with regard to councillors.

2.03 The Safeguarding of Vulnerable Groups Act 2006 specifies that councillors hold positions which are eligible for a CRB check if the councillor is:-

- A member of a Fostering Panel
- A member of an Adoption Panel
- A member of a Local Safeguarding Board
- A member of an Executive of a local authority which discharges social services functions wholly or mainly to vulnerable adults, or which discharges in the education functions, or social services

functions

- Is a member of a committee which discharges any such functions
- Is a member of a local authority and discharges any such functions

3.00 CONSIDERATIONS

3.01 I think it is reasonable to say that Overview & Scrutiny Committees are committees discharging education and social services functions. Also that those councillors who are actively engaged in corporate parenting and children's/nursing home rota visits are doing so as well. This means that approximately 65 out of 70 councillors are in positions for which appear eligible for CRB checks.

3.02 Given the importance that the Council places on safeguarding both children and vulnerable adults it seems appropriate that the Council policy should be to seek CRB checks on all members who occupy any of the following positions or who undertake the following activities:

- A member of the Cabinet
- A member of either the Housing Overview & Scrutiny Committee, the Lifelong Learning Overview & Scrutiny or the Social & Health Care Overview & Scrutiny Committee (and any substitutes)
- A member of the Fostering Panel
- A member of the Adoption Panel
- A member of the Local Children's Safeguarding Board
- A school governor
- Carries out a corporate parenting role under the council's corporate parenting policy
- Undertakes rota visits of children's homes
- Undertakes rota visits of care homes

Whilst this will not cover all of our councillors it does seem to cover all those councillors who fall within the legislative categories that are capable of being CRB checked.

3.03 In order to undertake a CRB check it is necessary for the person who is the subject of the check to consent, ie. it is open to councillors and co-opted members to refuse to consent. In such circumstances the Council will be missing a key piece of information for safeguarding vulnerable adults and children. Without that information the Council could reasonably regard the risk to those groups as being too great and could thus refuse to permit the councillor to undertake any of the above activities or hold any of the above positions. That is the course that your officers would advise you to take.

3.04 CRB checks are valid at the point of time when they are issued. Should a person subsequently be convicted of an offence then the CRB will be out of date. Some councils have a policy of reviewing CRB checks on a regular basis (say every 3 years). Given the

publicity that is likely to be attendant upon a councillor being prosecuted and other processes that are in place (such as the local safeguarding arrangements), I believe that the Council would find out if one of its members is subsequently convicted. Clearly, there is a risk (albeit small) that such a conviction might take place without the Council finding out so some renewal of checks are necessary. On balance, I would recommend that the Council carries out CRB checks on all eligible councillors following whole council elections (or by-election). Clearly, as the make up of the Cabinet and Overview & Scrutiny Committees changes with time fresh checks may be necessary and should be carried out as and when required. For example, if a councillor who has not previously been checked is subsequently invited to join the Cabinet then he or she should be checked at that point in time.

3.05 Councillors have a representative role to play as well. On behalf of vulnerable adults and/or children in their wards they may well need to have dealings with the county council. This role can not be said to be discharging functions of the county council in a way that would make them eligible for a CRB check. Given that the legislation could quite easily have specified that all county councillors should be CRB checked, parliament is presumed to have accepted that councillors will carry out this representative role without a CRB check. It is therefore worth noting that should a councillor refuse to have a CRB check then she or he will nevertheless be able to continue to represent vulnerable sections of the community within his or her ward and obtain all necessary information to do so. That is to say no restriction should be placed on a councillor acting in a representative capacity simply because he or she has not been CRB checked.

4.00 RECOMMENDATIONS

4.01 That councillors falling into the following categories are CRB checked.

- A member of the Cabinet
- A member of either the Housing Overview & Scrutiny Committee, the Lifelong Learning Overview & Scrutiny or the Social & Health Care Overview & Scrutiny Committee (and any substitute)
- A member of the Fostering Panel
- A member of the Adoption Panel
- A member of the Local Children's Safeguarding Board
- A school governor
- Carries out a corporate parenting role under the Council's corporate parenting policy
- Undertakes rota visits of children's homes or care homes

4.02 That checks be carried out on eligible members following county council elections, and on the relevant members following by-elections and any change in the composition of the Cabinet, committees, panels etc.

4.03 That councillors who have not been CRB checked are not eligible to hold any of the above positions or take part in any of the designated activities, noting that a councillor will not be subject to any restrictions on his or her representative role on behalf of vulnerable groups.

5.00 FINANCIAL IMPLICATIONS

5.01 There is a small cost to carrying out CRB checks of £44 per check. Carrying out checks on only those specified groups would therefore save the council £220 per year.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 The Council needs to ensure that it does not discriminate against people with a protected characteristic including age and disability. The safeguarding of children and vulnerable adults is an important part ensuring that those vulnerable groups do not suffer poor treatment or discrimination. Those groups are also entitled to representation in the same way as everyone else and so preserving their councillor's right to represent them without having been CRB checked is also an important balance in ensuring that they are not subject to any less favourable treatment.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 None as a result of this report.

11.00 CONSULTATION UNDERTAKEN

11.01 Group Leaders have been consulted as have the Directors of Community Services and Lifelong Learning.

12.00 APPENDICES

12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS

- Safeguarding Vulnerable Groups Act 2006
- Protection of Freedoms Act 2012
- Councils Circle of Care, Corporate Parenting Policy

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