

DISCLOSURES POLICY: ELECTED MEMBERS

To: Cabinet

Date: 20 December 2005

From: Deputy Chief Executive – Children and Young People’s Services

Electoral division(s): All

Forward Plan ref: 2005/061 **Key decision:** Yes

Purpose: The purpose of this paper is for Cabinet to consider an interim policy for disclosure checks for elected Members and a policy that standard checks be mandatory for all elected Members following the next full Council election; with enhanced checks as listed below. In the interim there is a need for clarity regarding what level of checks shall apply for which Members and how the process of applying a Criminal Record Bureau (CRB) check would be managed.

Recommendation: It is proposed that Cabinet **RECOMMENDS** that the County Council:

- (i) Adopts the attached Disclosures Policy for Members
- (ii) Agrees that the following are subject to enhanced checks:
 - All Members of Cabinet.
 - Chairman and Vice-Chairman of the Council.
 - Opposition Spokespersons for Children and Young People’s Services and for Environment and Community Services (whose remit includes vulnerable adults and older people).
 - Members of the Adoption and Fostering Panels.
 - Assigned visitors for children’s homes.
 - Members engaged in regular liaison with young people or vulnerable group representative bodies such as Youth Parliament.
- (iii) Agrees that, in the interim, standard checks be restricted to the following:

Scrutiny Committees

 - Children and Young People’s Services Scrutiny Committee
 - Health and Adult Social Care Scrutiny Committee

SDGs

 - CYPS Inclusion SDG
 - CYPS Planning and Development SDG
 - ECS Community Learning and Development and Adult Social Care SDG
- (iv) Agrees that following the next election the system be expanded to include a standard check for all Members as well as the enhanced checks set out in recommendation (ii).

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1. BACKGROUND

- 1.1 There is general awareness of the inherent conflict between doing all that is reasonable to protect children and vulnerable adults for whom the County Council has a statutory responsibility and intruding into a person's background.
- 1.2 Case examples illustrate that children/vulnerable adults can be at risk from a variety of sources including employees, volunteers and those in specific positions of trust. Accordingly, it is incumbent on the County Council to adopt best practice as a safe employer, corporate parent and service regulator. Background checks by themselves are insufficient to ensure maximum safety. They are however, necessary and elected members should be encouraged to model good practice as they do undertake activity which provides opportunities, for example, to cultivate specific friendships with children/vulnerable adults.
- 1.3 The Council's Disclosures Policy clearly sets out the requirement for pre-employment checks for staff, volunteers, agency staff and contractors, including the circumstances in which a Criminal Records Bureau (CRB) check will be undertaken. It also makes reference to the position of elected Members. However, the application of the policy has been less consistent and it is considered that this should now be addressed, through the development of a policy specifically referring to the roles Members may be expected to play.

2.0 ISSUES

- 2.1 Members undertake a wide range of roles, particularly in relation to community leadership. The public therefore have the right to expect that Members will demonstrate high standards of integrity. This needs to be balanced carefully against the individual Member's right to privacy. CRB checks are undoubtedly an intrusion into privacy, since the check involves a review of previous criminal records, including convictions, cautions, bindovers and other forms of warning. Whilst entirely supporting the desire to create a safe environment for vulnerable clients, some Members may view the need for a CRB check as an infringement of their civil liberties, as may other individuals subject to the relevant policies agreed by Council.
- 2.2 As the Children's Services Authority, the County Council is responsible for ensuring that everyone who has contact with children and young people in the course of their duties has undergone pre-employment or pre-appointment checks. Members are asked to consider the advisability of allowing those who have not been appropriately checked to have access to children, or to their case records.
- 2.3 A partial review of the decisions taken by other local authorities would tend to indicate that a majority of those councils surveyed have opted to require Members to undergo CRB checks shortly after their election. Others are reviewing their position and thus, at the same stage as Cambridgeshire. This requirement applies, irrespective of the nature of the work in which the Member is likely to be involved. Members may wish to consider whether Cambridgeshire should also adopt this approach in the interests of

demonstrating high standards of probity. The proposals in this paper are an interim position with the requirement for a standard check for all Members to be introduced after the next election.

- 2.4 The disclosure policy for Members is attached and set in the following context. In due course the number of extended checks may increase and consideration given to whether that it is a formal part of the process for all Members following the next election.
- 2.5 Following the next election it is proposed that the requirement for a basic check for all Members will be introduced.
- 2.6 The proposed Disclosures Policy for Members is set in the following context:
- Section 79 and 80 of the Local Government Act 1972, whereby a person putting themselves forward for election as a Member has to make various declarations of entitlement
 - Section 35 The Criminal Justice and Court Services Act 2000 states that a person disqualified from working with children is guilty of an offence if he/she knowingly applies for, offers to do, accepts or does any work in a “regulated position”. (This is defined in section 36 (6)(d) of that Act as including “a member of a relevant local government body and in that capacity he or she discharges education or social services functions”)
 - Due regard to the revised guidance on the Protection of Children Act 1999 issued in September 2005 entitled “[A Practical Guide to the Act for all Organisations Working with Children](#)” which in Paragraph 3.2 refers to individuals who, by virtue of the authority and responsibility inherent in the post they hold, would be expected to be positively suitable to work with children and (in paragraph 3.4) states that these include those who hold positions that grant access in a privileged way and should be included even if contact is not a regular part of the position. Examples given include trustees of local charities and relevant local government bodies.
 - All procedures will comply with the Criminal Records Bureau checks Code of Practice.

3.0 RISK MANAGEMENT IMPLICATIONS

- 3.1 Members are advised of the following **key** risk management implications that arise from this report. These risk issues have been identified using a risk management process carried out in accordance with the Council’s Risk Management Strategy:
- a) Children, young people or adults could be placed at risk from inappropriate behaviour by a Council Member who is seen to be in a position of trust.
 - b) Council Members could fail in their role as Corporate Parents (as defined in the Children Act 1989) if the policy is not implemented.
 - c) If an effective policy is not implemented the Council’s reputation could be damaged if a Member develops an unacceptable relationship with a vulnerable child, young person or adult.

d) The policy could be approved but not implemented effectively leading to breach of confidentiality or failure to ensure the relevant checks are undertaken.

3.2 In order to manage these issues a number of mitigating actions are to be taken in accordance with the management action plans prepared by the identified risk owners. Examples of key actions are illustrated below for Members' reference:

Risk (a)

The recommendations of the report be implemented.

Risk (b)

The recommendations of the report be implemented.

Risk (c)

The recommendations of the report be implemented.

Risk (c)

Regular internal audits of the disclosure process, cooperation with any compliance check or audit from the CRB, reporting of any suspected malpractice to the CRB, reporting of loss of disclosure information to the CRB and use of disclosure information for appointment purposes only.

4.0 FINANCIAL IMPLICATIONS

The estimated cost for carrying out the CRB checks based on the checks being undertaken every four years and on current charges is £2830. This assumes 20 enhanced checks @ £44 and 50 standard checks @ £39). These costs will be absorbed within existing budgets.

Source Documents	Location
Government guidance " A Practical Guide to the Act for all Organisations Working with Children ".	Room B008, Castle Court, Cambridge.

APPENDIX 1

DISCLOSURES POLICY: ELECTED MEMBERS**1.0 Introduction**

- 1.1 All elected Members share responsibility for developing and embedding an ethos across the County Council that places the safety and well being of children and vulnerable adults at the heart of everything we do. If a child is “looked after” under the Children Act 1989, the local authority has parental responsibility for that child. This gives all Members a ‘corporate parenting’ role, which could, for example, involve them in being party to decisions about a child’s care plan and may involve them in visiting any looked after child. It goes without saying therefore that all reasonable steps need to be taken to ensure that the public can have faith in the credibility of Members who are making decisions on issues concerning children and vulnerable adults.
- 1.2 There are many ways in which a safe environment can be created and no single step will be sufficient in developing a robust approach to safeguarding. One of the key requirements for County Council employees is to ensure that all reasonable steps are taken to check that those who work with children and vulnerable adults, on a paid or voluntary basis, are suitable for the roles they will undertake. It follows, therefore, that a similar policy should be required for Members in order to demonstrate equal concern for the safety and well being of children and vulnerable adults.
- 1.3 Pre-employment or pre-appointment checks are only part of the process and the safety of children/vulnerable adults is best delivered by us all paying attention to our own behaviour and that of other people at all times. Nevertheless, pre-employment or pre-appointment checks are an important part of the approach to safeguarding children and vulnerable adults. As major employers in Cambridgeshire, elected Members are expected to give the lead to staff, schools, partner organisations and stakeholders, by participating in disclosure checks as set out below.

2.0 Principles

- 2.1 The Police Act, 1997 (Part V), established the Criminal Records Bureau (CRB) to undertake checks on the suitability of adults to work with children and vulnerable adults. The CRB has access to a wide range of data sources, from which it is able to compile information to assist employers in determining suitability. Data sources include information held on the Police National Computer (PNC), credit reference agency files, List 99 (held by the DfES), the POVA [Protection of Vulnerable Adults] List (maintained by the Department of Health) and others.
- 2.2 The County Council has a clear disclosures policy for employees, volunteers, partner organisations, suppliers and contractors. In view of the special status of elected Members, this document sets out the process to be followed in dealing with disclosures for Members. However, it shares the same key principles with the policy for other groups represented within and beyond the County Council’s workforce.

- 2.3 Account also requires to be taken of the revised guidance issued in September 2005 on Protection of Children Act 1999, entitled “[A Practical Guide to the Act for all Organisations Working with Children](#)”.

Paragraph 3.2 of the guidance refers to “the great and the good: individuals who, by virtue of the authority and responsibility inherent in the post they hold might expect to be positively suitable to work with children”.

Paragraph 3.4 identifies this group as those who hold positions that are considered to grant them the kind of access to children, or the kind of influence and position which, if the holder of the position were unsuitable to work with children could place children at risk. Thus include trustees of local charities, relevant local government bodies (with certain specified social services and education functions).

- 2.4 The County Council will undertake disclosure checks in accordance with the following principles:

- The level of check will be appropriate for the type of work in which the Member can expect to be involved.
- The determining factor for undertaking a disclosure check will be whether the Member will be involved in regular contact with children, young people or vulnerable adults.
- ‘Regular contact’ may include face-to-face contact, receipt of regular reports on individual children or vulnerable adults (i.e. non-aggregated data), contact via information technology or via communication technology.
- The Council will not use information obtained via disclosure checking to discriminate unfairly against any Member who has a criminal record (see separate Policy on the Recruitment of Ex-Offenders).
- The requirements of the Code of Conduct for Elected Members and the Standards Committee will apply at all times.
- The County Council’s designated Monitoring Officer (the Director of Governance) or his nominated Deputy will act as adjudicator in the event of any complaint.

3.0 Definitions

- 3.1 There are two levels of disclosure checks for which a certificate is produced. These are at standard and enhanced level.

3.2 Standard Disclosure

- 3.2.1 The disclosure certificate shows details of ‘spent’ and ‘unspent’ convictions, cautions, bind overs, formal reprimands and final warnings, which are held on the Police National Computer (PNC). Certificates will either show a ‘trace’, i.e. where there is a record of some kind, or will specify ‘no trace’. If the Member is likely to come into regular contact with children, young people or vulnerable adults, the disclosure certificate will also show whether the person is barred from this type of work because of his/her inclusion on the lists maintained by the DfES or the Department of Health.

- 3.2.2 The standard disclosure is available for all posts or activities specified in the Rehabilitation of Offenders Act 1974. Broadly, these are posts:

- a) Where the postholder will have regular contact with children and young people.
- b) Certain named professions, e.g. pharmacy and law.
- c) Senior managers in banking and financial services.

3.2.3 As part of the vetting arrangements following the next full County Council election all Members will be subject to a standard disclosure check.

3.2.4 As an interim step standard checks will be carried out on Members of the following Committees and Service Development Groups (SDGs):

- Children and Young People's Services Scrutiny Committee.
- Health and Adult Care Scrutiny Committee.
- Children and Young People's Services Inclusion SDG.
- Children and Young People's Services Planning and Development SDG.
- Environment and Community Services Community Learning and Development and Adult Social Care SDG.

3.3 Enhanced Disclosure:

3.3.1 The enhanced disclosure certificate contains the same details as the standard check. However, it may also contain non-conviction information from local police records that a Chief Constable believes may be relevant in connection with the appointment.

3.3.2 The enhanced disclosure is available for positions where Members may become involved in providing regular care for, training and/or being in sole charge of children or vulnerable adults. The County Council's policy also requires an enhanced disclosure certificate for any position where a child or vulnerable adult might develop a relationship based on trust with an elected Member. Members who are involved in regular contact with an individual or group of young people or vulnerable adults, for example as part of the Youth Parliament, will also be required to undertake an enhanced check.

3.3.3 In light of the 1999 Protection of Children Act as revised September 2005 it is proposed that the following Members are subject to enhanced checks:

- All members of Cabinet.
- Chairman and Vice Chairman of the Council.
- Opposition Spokespersons for Children and Young People and for Environment and Community Services (whose remit includes vulnerable adults and older people).
- Members of the Adoption and Fostering Panels.
- Assigned visitors for children's homes.
- Members engaged in regular liaison with young people or vulnerable group representative bodies such as the Youth Parliament.

3.4 Regular Contact:

The County Council defines regular contact as face-to-face contact or contact via some form of ICT.

4.0 Members not wishing to undergo a Disclosure Check

4.1 Members who do not wish to undergo a disclosure check will not be eligible to become involved in work of any kind with children, young people or vulnerable adults. The wishes of the Member will be respected and they will be offered appointment to other service areas, where there will be no contact with children, young people or vulnerable adults. Should a Member wish to work with vulnerable client groups at a later stage, s/he will be required to undertake a disclosure check before doing so. It is proposed that after the next election all Members undertake a standard check.

5.0 Applying for a Disclosure Certificate

5.1 As indicated above, appointment or nomination to certain Scrutiny Committees, SDGs or other working groups will carry an automatic requirement for the Member to undergo a CRB check. Where the appointment requires a disclosure certificate, the Member will be asked to complete the CRB form. The Member will be required to provide proof of identity, e.g. passport, driver's licences, etc. to the Director of Human Resources, who is the Council's lead signatory and will sign all applications from Members.

5.2 Members are asked to note that it is a criminal offence:

- a) To seek appointment if you know you are disqualified from it because of your criminal record, or some other unsuitability.
- b) For an organisation to appoint someone whom they know to be disqualified from working with children and/or vulnerable adults by reason of their criminal record or some other unsuitability.
- c) To pass on information revealed by a standard or enhanced certificate in certain circumstances.

5.3 Failing to disclose a 'spent' conviction when seeking appointment to a role working with children or vulnerable adults will be considered a breach of the Code of Conduct, which will be referred to the Monitoring Officer for review and/or action.

6.0 Where a Disclosure Check Reveals a 'Trace'

6.1 Disclosure certificates at the standard level are generally issued within three to four weeks and the Member may expect to have a copy sent to them by the CRB. The process for checking local police records can take time, so it is unlikely that an enhanced check will be returned in under six weeks. The CRB will also send a copy of the enhanced disclosure certificate to the Member concerned.

6.2 The master copy of the disclosure certificate will be returned to the Director of Human Resources. If the certificate reveals a trace, i.e. information that

requires review, it will be considered by the Member who will contact the Director of Human Resources regarding the course of action to be taken from the options set out in paragraph 7.2. This may include a discussion on whether the data is accurate; if so, the circumstances surrounding the offence; any mitigating circumstances; and the reason(s), if appropriate, as to why the information was not shared earlier. Thereafter it will be agreed whether or not a risk assessment is required to be carried out by the Director of Human Resources and the Council's Monitoring Officer.

6.3 Under the Protection of Children Act, 1999 and the Criminal Justice and Courts Services Act, 2000, it is unlawful for the Council to employ or appoint someone, regardless of mitigating circumstances, who may have regular contact with children and is either included on the register maintained by the Department of Health and is judged unsuitable to work with children, or is subject to a Disqualifying Order made on being convicted or charged with any of the following offences against children:

- Murder.
- Manslaughter.
- Rape.
- Other sexual offences.
- Grievous bodily harm.
- Other acts of violence.

6.4 Anyone convicted or charged with any of the above against adults will also be seen as a high risk. It is the Council's normal policy to also consider it a high risk to employ or appoint someone to a position with regular contact with children if they have been convicted or charged at any time with any of the following offences:

- Serious Class A drug-related offence.
- Robbery, burglary or theft.
- Deception or fraud.

7.0 **Possible Outcomes Arising from a CRB Check**

7.1 In the vast majority of cases, CRB checks will show 'no trace', in which case the proposed appointment may proceed as planned.

7.2 Where a trace appears, the risk assessment approach outlined above will be carried out. It is, however, recognised that the Member concerned may wish to exercise one of the following choices:

- a) To withdraw from the proposed appointment.
- b) To discuss the information with the relevant Deputy Chief Executive/Director of Human Resources.
- c) To discuss the appointment with his/her Political Group Leader.
- d) To submit additional information regarding the CRB certificate.
- e) To request that the matter be referred to the Monitoring Officer.

7.3 In cases where the Monitoring Officer believes there has been an infringement of the Code of Conduct for Members, the matter will be discussed with the Chief Executive.

8.0 Retention of Disclosure Information

8.1 All information supplied during the checking process, including the final certificate will be held securely by the Director of Human Resources and dealt with as listed below.

8.2 The Director of Human Resources will:

- Maintain a database of disclosure checks undertaken, including date of disclosure, type of disclosure, name of Member, type of appointment, CRB reference number and name(s) of those to whom the disclosure information has been revealed.
- Ensure access is restricted to the Monitoring Officer only.
- Ensure that the disclosure certificate and any associated material will be shredded immediately after all issues have been resolved.
- Prohibit the photocopying or scanning of disclosure checks, or copying or representing the contents in any way.

9.0 Frequency of CRB Checks

9.1 New Members:

9.1.1 Much will depend on how frequently Members move between areas of responsibility. However, where a Member has not previously been involved in work with children and/or vulnerable adults, a check will be required before s/he begins the new role.

9.2 Serving Members:

9.2.1 Some Members have already undergone CRB checks as a result of their current role and there is no requirement for the check to be carried out again. The CRB suggest that checks should, however, be renewed at three yearly intervals. Subject to CRB approval it is proposed that member checks follow the electoral cycle – i.e. once every four years.

9.2.2 For serving Members who have not already undergone a CRB check, the following approach is proposed:

- Inform all existing Members of the Council's policy on disclosure.
- Provide Members affected by the policy with a copy of the County Council's standard form on the declaration of criminal records, which should be completed and returned by a specified date. This should be accompanied by a reminder to declare all convictions, cautions, bind offers, etc.
- Undertake an objective assessment where the disclosure reveals an offence, conviction, caution, etc.
- Seek redeployment to a different area of responsibility if a trace returns that would prevent the Member from working with children or vulnerable adults.

- Refer any case, which cannot be resolved in any other way to the Council's Monitoring Officer or his/her nominated deputy.

9.3 Monitoring and Audit

9.3.1 The Council will:

- Undertake its own internal audit of the disclosure process on a regular basis.
- Cooperate with any compliance check or audit from the CRB.
- Report any suspected malpractice to the CRB.
- Report any loss of disclosure information to the CRB.
- Use disclosure information for appointment purposes only.