

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Leader and Cabinet

14 December 2006

AUTHORS: Chief Executive / HR Manager

REVIEW OF CRIMINAL RECORDS BUREAU POLICY AND PROCESSES

Purpose

1. The purpose of the report is to provide an update on the proposed development of a policy for undertaking Criminal Records Bureau (CRB) checks on Councillors. This report has been informed by a CRB Assurance visit at the end of August 2006 and the report analyses the implications of that visit.

Executive Summary

2. Scrutiny and Overview Committee considered a report, drafted by the Senior Democratic Services Officer, at its meeting of 20 July 2006. The committee, having regard for issues and sensitivities outlined within the report, recommended that Cabinet develop a policy on CRB checks for Members.
3. The development of a policy and procedure had been postponed pending the outcome of a CRB Assurance visit. The visit took place on 31 August 2006 and the inspectors report and recommendations have now been received.
4. The assurance report requires a number of changes to be made to the Council's current processes in relation to CRB checks. The recommendations and advice provided by the inspector has also informed the Council in relation to CRB checks for Councillors.
5. The main impacts of the recommendations, which will influence a decision to develop a CRB policy and procedure for Councillors, concern eligibility for requesting a CRB check and the nature of the information received from the CRB.

Background

6. The Council as a registered body is bound by the "Code of Practice and Explanatory guide for Registered Persons and other recipients of Disclosure Information" and other guidance issued on the workings of the Code of Practice by the CRB.
7. CRB checking on prospective and current employees has been carried out since 2003. A review and update of the policy was carried out in 2004. A further review is planned for 2006/2007 to check that policy and procedures had kept pace with changes in CRB guidance.
8. The CRB carries out random assurance checks on registered bodies. The CRB carried out such a visit on 31 August 2006. During the assurance visit, the CRB assurance manager considered the Council's proposal to introduce a policy of checking elected members.

9. In March this year Council agreed that all members should undergo mandatory CRB checks. Scrutiny and Overview examined the issue in July and recommended that Cabinet develop a policy on CRB checks for members. A report was subsequently prepared for Cabinet in September. The report to Council was withdrawn pending the outcome of the assurance visit report.
10. The assurance report has now been received and the recommendations and implications have been considered by the lead counter-signatory (currently the HR Officer) and officers of the Council. The assurance report recommends a number of changes to be made to staff recruitment practices and policies.
11. The assurance report also draws the Council's attention to the importance of ensuring that the organisation only countersigns disclosure applications in respect of positions that genuinely entitle the Council to ask an exempted question. For Councillors, this means that the position that they hold must meet the CRB's eligibility criteria to enable the Council to request that a disclosure check is undertaken.

Considerations

12. The CRB advises that:
 - (a) Standard checks are primarily for posts that involve directly working with children or vulnerable adults. Standard checks may also be issued for people entering certain professions, such as members of the legal and accountancy professions. The Standard check contains details of all convictions held on the Police National Computer including current and 'spent' convictions as well as details of any cautions, reprimands or final warnings. If a position involves working with children, the CRB check will indicate whether information is held on three government lists of those who are banned from working with children or the vulnerable.
 - (b) Enhanced checks are for posts that involve a far greater degree of contact with children or vulnerable adults. In general the type of work will involve regularly caring for, supervising, training or being in sole charge of such people. Examples include a Teacher, Scout or Guide leader. Enhanced checks are also issued for certain statutory purposes such as gaming and lottery licences. This level of check involves an additional level of check to those carried out for the Standard CRB check; a check on local police records. Where local police records contain additional information that may be relevant to the post the applicant is being considered for, the Chief Officer of police may release information for inclusion in an Enhanced check. Exceptionally, and in a very small number of circumstances (typically to protect the integrity of current police investigations), additional information may be sent under separate cover to the Counter signatory and should not be revealed to the applicant.
13. The main impact of the assurance guidance that will affect the CRB policy and procedure is that of 'Eligibility'.

Eligibility

14. The effect of asking for a disclosure is to ask exempt questions under the Rehabilitation of Offenders Act. If a person is sentenced to more than 2 years in prison, the conviction can never be considered as spent and would have to be declared whatever the job role. Sentences of less than 2 years can be rehabilitated and considered as spent and therefore there is no need for this information to be

disclosed. The exemption orders to the Act allow for questions to be asked about previous convictions for certain roles and appointments.

15. The Assurance Manager provided guidance in respect of elected members within the miscellaneous section of the report which highlights that the organisation needs to show why it is asking the exempt questions and the importance of only countersigning Disclosure applications in respect of positions that genuinely entitle the organisation to ask an exempt question. Access to sensitive information about vulnerable people and children is not an 'entitlement' nor is the election of a councillor. The CRB eligibility guidance was updated in August 2006.
16. For members, the guidance specifies that a person can only be asked to make a disclosure in a local government context if they are:
 - (a) a member of a governing body of an educational institution or
 - (b) a member of a relevant local government body which is involved in discharging any education or social service functions of a local authority or committee which discharges any such function.
17. The Council does not discharge any social service or education function and it is difficult to find another reason in the eligibility guidance that gives the Council the right to ask any member to undertake a check.
18. There is currently a tension between the CRB guidance and the current "Safeguarding Children" agenda, which seeks to ask for a check on almost anyone coming into contact with children.
19. The reasoning for checking members was the establishment of public confidence rather than meeting the eligibility requirements.

Options

20. The Council could implement a policy to require all elected members to undergo CRB disclosure checks. However, this would not be in the spirit of the legislation and would be open to legal challenge by individuals and it would be up to the Council to prove it had the right to ask an exempt question under the Rehabilitation of Offenders Act. This approach might be difficult to maintain given the current guidance. Sufficient successful challenges could affect the registration status of the Council and this would be costly to defend.
21. There would be cost implications following the introduction of such a policy. The cost of an initial standard check for 57 members will be £1767.00 and a budget would need to be identified, re-checks would be needed periodically and certainly upon the election of a new councillor, therefore there would need to be ongoing budget provision.
22. A process for member applications and handling returned information from the CRB would also be required. This would involve an appropriate officer administering applications and returned CRB checks. Any checks showing a 'trace' would need to be handled within confidentiality guidelines.
23. The Council could consider the risks associated with not undertaking checks on all members to be limited. Some district council members have already been checked in connection with their other roles and outside interests such as school governors or as

part of their role as county councillors. However the CRB advises against 'portability' and does not recommend that checks are transferred between organisations.

24. The roles of individual councillors may develop in such a way as to qualify them for a CRB check under the eligibility criteria, for example, a councillor may be appointed onto a committee or body which has a direct involvement with children or vulnerable adults. In these circumstances the Leader of the Council or a member of Democratic Services should advise the council's CRB lead counter-signatory and arrange for a CRB check to be undertaken. The reasons for the Councillor being CRB checked would need to be clearly documented against the eligibility criteria.
25. Legislation in relation to CRB checking is updated periodically and the guidance/advice to local authorities changes from time to time. In the event of a significant change affecting the guidance on Local Authority or Councillor roles, a further report will need to be brought to Cabinet to consider the implications at that time.

Implications

26. The legal and risk management implications have been highlighted under Considerations.

27.	Financial	The cost of a standard check for 57 members will be £1767.00, a budget does not currently exist for this. There would be financial implications if a challenge to the right to ask for a disclosure were made (legal costs and possible compensation and fine).
	Legal	See body of report
	Staffing	See body of report
	Risk Management	See body of report
	Equal Opportunities	The request for a disclosure relates to the post and role and not individual.

Consultations

28. The Criminal Records Bureau has been consulted.

Effect on Annual Priorities and Corporate Objectives

29.	Affordable Homes	None
	Customer Service	
	Northstowe and other growth areas	
	Quality, Accessible Services	
	Village Life	
	Sustainability	
	Partnership	

Recommendations

30. It is recommended that Cabinet:

- a. note the guidance provided by the CRB Assurance Manager, as referred to in paras 16 and 17 above;
- b. do not take forward the proposal to introduce a policy to check all elected members but;
- c. in the event of a councillor commencing in a role which does meet the CRB criteria for eligibility, that the Leader or Democratic Services Manager advises the council's CRB lead counter-signatory and that a CRB check is undertaken and the reasons for the Councillor being CRB checked are clearly documented against the eligibility criteria.

Background Papers: the following background papers were used in the preparation of this report:

CRB Code of Practice and associate guidance

Report to Leader and Cabinet dated 9th March 2006 "Implementation of Protection of Vulnerable Adults Policy"

Report to Scrutiny and Overview Committee – 20th July 2006

Report to Cabinet 14th September 2006 "Developing a Policy on CRB Checks"

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