

# POLICY CONCERNING DISCLOSURE AND BARRING SERVICES FOR COUNCILLORS



## 1. Introduction

- 1.1. The effective date of commencement for this policy is 17 January 2023.
- 1.2. This policy complies with the Rehabilitation of Offenders Act 1974 and the associated Exceptions Order 1975, and with the Disclosure and Barring Service (DBS) Code of Practice.
- 1.3. This policy replaces all previous policies, decisions and/or precedents relating to criminal records checks for Plymouth City Council Councillors.
- 1.4. In light of the fact that Council and its relevant Committees and Boards discharge both education and social services functions, this Policy sets out the requirement of Councillors and co-opted members to undergo a DBS Check, as defined in section 6 of this Policy.

## 2. Requirement to undergo a Standard or Enhanced DBS Check

- 2.1. The following will be required to undergo a check, to be carried out in accordance with this Policy:
  - 2.1.1. All Councillors or co-opted members appointed to a Committee or Board which has decision making responsibility for the discharge of any education and/or social care function;
  - 2.1.2. Any Councillor appointed to a position with the Cabinet with responsibility for the discharge of any education and/or social care function;all of which will be, for the purposes of this Policy a “Relevant Position”.
- 2.2. An Enhanced DBS Check will be undertaken for those relevant positions where the Councillor has, by virtue of that position, responsibility for functions which mean it is eligible for an Enhanced DBS Check.
- 2.3. Unless 2.5 applies, within no more than two months of the appointment of a Councillor or any co-opted Member to a relevant position they shall be required to undergo the relevant check under this policy.
- 2.4. Where a Councillor or co-opted member has had a check undertaken as a result of them holding a relevant position previously, and the resulting certificate is less than 4 years old, they will not be required to undergo a further check unless the requirement is for an enhanced DBS check and the previous check was a standard DBS check.
- 2.5. Any Councillor or co-opted member who hold a relevant position and whose last check was more than 4 years ago will be required to undergo a further check.
- 2.6. It is acknowledged that some Councillors and co-opted members hold other positions outside of the Council that require them to have a check. It is the responsibility of the relevant organisation to undertake that check. Where a councillor or co-opted member

wishes to port a check certificate undertaken in relation to a non-council related role, it will be the decision of the Monitoring Officer as to whether this will be accepted.

### **3. The Process**

- 3.1. Checks will be processed by the Council's Human Resources team using the online service following a request by either the Monitoring Officer, the Chief Executive or the Head of Governance, Performance and Risk.
- 3.2. A councillor will not be prevented from undertaking the responsibilities of their role pending the outcome of the check unless it is considered by the Chief Executive in consultation with the Monitoring Officer that to do so would pose a risk to children, young people and/or vulnerable persons.
- 3.3. In such cases the Chief Executive may, on the advice of the Monitoring Officer and in consultation with the relevant Group Whip, require the relevant Councillor or co-opted member to undertake their duties with any safeguards they consider reasonable in the circumstances to mitigate the risk identified.
- 3.4. The relevant Councillor or co-opted member will be provided with a copy of the check certificate issued by the Disclosure & Barring Service subsequent to any check undertaken.
- 3.5. The Chief Executive, Monitoring Officer and Head of Governance, Performance and Risk will be notified of the results of any check undertaken as a result of this policy.

### **4. DBS Certificates that are not clear**

- 4.1. Where a certificate following a check is not clear, for instance, it contains details of an offence, the Councillor or co-opted member will be required to provide a full copy of the check certificate to the Monitoring Officer within 7 days of the date they themselves receive it.
- 4.2. In the event that the check certificate raises issues of concern, the Chief Executive, in consultation with the Monitoring Officer, the relevant responsible Director for the area concerned and the relevant Group Leader, will discuss with the individual Councillor and the implementation of any restrictions considered necessary, to safeguard children, young people and adults, in relation to the positions held by that Councillor.
- 4.3. If the Councillor or co-opted member raises a dispute with the Disclosure and Barring Service concerning any certificate issued following a check, they must notify the Monitoring Officer within 7 days of the dispute being submitted. Within 7 days of notification to the Councillor or co-opted member of the outcome of that dispute, inform the Monitoring Officer of the outcome.
- 4.4. The existence of a criminal record or other information revealed as a result of a check will not debar a Councillor from holding office unless it is one which meets the requirements in section 80 of the Local Government Act 1972, i.e. that it shows an criminal conviction for which a sentence (suspended or not) was given with a term of not less than three months, given no more than 5 years prior to or subsequent to their election to office.

## 5. Sharing and Management of DBS information

- 5.1. In accordance with Section 124 of the Police Act 1997 all disclosure information obtained by the Council in response to a check will only be passed to those people who are authorised to receive it in the course of their duties, including those officers identified in this policy.
- 5.2. The Monitoring Officer and Head of Governance, Performance and Risk will maintain a record of
- 5.2.1. the date a check was requested;
  - 5.2.2. what type of check was requested;
  - 5.2.3. the date a response was received; and
  - 5.2.4. a 'list' of all those to whom the disclosure or disclosure information has been revealed together with other relevant information.
- 5.3. All information provided by the Disclosure and Barring Service in relation to any check will be kept securely and destroyed a date not later than six months of its date of issue, in line with the DBS Code of Practice and the Data Protection Act, unless 5.4 applies.
- 5.4. If, in very exceptional circumstances, it is considered necessary to keep certificate information for longer than six months, we will consult the Disclosure and Barring Service about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

## 6. Eligibility Requirements and Definitions

- 6.1. In this Policy the following terms have the stated meanings:

Basic check £18	The basic check can be used for any position or purpose, there is no eligibility criteria. A basic certificate will contain details of convictions and cautions from the Police National Computer (PNC) that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974
Standard check - £18	The standard check is available for duties, positions and licences included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. A standard level certificate contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with legislation.
Enhanced check (without barred list)- £38	The enhanced check is available for specific duties, positions and licences included in both the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) and the Police Act 1997 (Criminal Records) regulations, specified activities with adults in receipt of health care or social care services and applicants for gaming and lottery licences.  An enhanced level certificate contains the same PNC information as the standard level certificate but also includes a check of local information held by the Police.
Enhanced with a barred list check - £38	The enhanced check with barred list check(s) is only available for those individuals who are carrying out regulated activity and a small number of positions listed in Police Act 1997 (Criminal

	Records) regulations, for example, prospective adoptive parents and taxi and Private Hire Vehicle (PHV) licences.  An enhanced level certificate with barred list check(s) contains the same PNC information and check of information held by the Police, as an enhanced level check, but in addition will check against the children's and/or adult's barred lists
Committee	means a committee of the Council and/or a committee of the Cabinet and shall include, where relevant, a joint committee of the Council
Board	means a board of the Council and/or of Cabinet, including advisory boards

### Functions relating to Children and Young People

6.2. A Councillor is only eligible for an enhanced DBS certificate without DBS barred list checks if they meet the specific legislative criteria from the [Safeguarding Vulnerable Groups Act 2006](#) set out below:

6.2.1. A person is a member of a relevant local government body if –

- i. they are a member of a local authority and discharge any education functions, or social services functions, of a local authority;
- ii. they are member of an executive of a local authority which discharges any such functions;
- iii. they are a member of a committee of an executive of a local authority which discharges such functions;
- iv. they are a member of an area committee, or any other committee, of a local authority which discharges such functions. This includes a reference to any sub-committee which discharges any such functions.

6.3. If the above conditions above are met, then a Councillor can be eligible for an enhanced DBS certificate without a check of the children's barred list. This is because the individual is carrying out a specific function included in the definition of work with children.

### Functions relating to adults:

6.4. Where the Relevant Position relates to works with adults, a Councillor is only eligible for an enhanced DBS certificate without DBS barred list checks if they meet the specific legislative criteria from the [Police Act 1997 \(Criminal Records\) \(Amendment No.2\) Regulations 2013](#) as follows:

6.4.1. The exercise of a function of a person who is;

- i. a member of a local authority and discharge any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service, as specified in the legislation;
- ii. a member of an executive of a local authority which discharges any such functions;
- iii. a member of a committee of an executive of a local authority which discharges any such functions; or
- iv. a member of an area committee, or any other committee, of a local authority which discharges any such functions;

- 6.5. If any of the conditions are met, then a Councillor can be eligible for an enhanced DBS certificate without a check of the adults' barred list. This is because the individual is carrying out a specific function included in the definition of work with adults.

## 7. Councillors not holding a Relevant Position

- 7.1. Councillors who do not hold a Relevant Position, and therefore do carry out any of the specific educational and/or social service functions will not be subject to a DBS check.
- 7.2. Though Councillors may carry out other responsibilities in the community, such as being School Governors, Trustees, or volunteer with organisations which bring them into contact with vulnerable groups, it is the responsibility of the organisation the councillor represents to perform this check.
- 7.3. There are no eligibility requirements for a basic check. Any Councillor would be able to make an application online subject to the payment of the fee. Officers will assist any Councillors who wish to update their Councillor profile with information concerning their DBS checks.
- 7.4. The local authority has no way to compel any member not undertaking regulated activity to undertake a basic check, though political groups may mandate such checks through their own rules.

## 8. Positions (2023) Subject to DBS check as a result of this policy –

<b>Position</b>	<b>Check</b>
Cabinet Members	Enhanced DBS Check
Corporate Parenting Group Member	Enhanced DBS Check