

Local Protocol – DBS Checks for Members

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1. Introduction

- 1.1 Torbay Council recognises its moral and legal responsibility to provide a duty of care for all children, young people and vulnerable adults. Those Members with regular direct contact with young people and vulnerable adults including Cabinet Members and Scrutiny Leads with responsibility for children and adults will therefore be required within 28 days of their appointment to undergo an Enhanced Disclosure check from the Disclosure and Barring Service (DBS). The Chief Executive has authority to determine which additional Members shall be subject to DBS checks. Arrangements will be made to ensure that all prospective candidates are aware of this before becoming a Council candidate.
- 1.2 The aim of this Local Protocol is to ensure that Members who have regular contact (or are in a position of authority over those with regular contact) with children or vulnerable adults in their official capacity do not present a risk to those persons. Non-elected members who do not have any role in respect of children or vulnerable adults are not required to undergo an Enhanced Disclosure check from the DBS.

2. Purpose of Enhanced Disclosure

- 2.1 Information contained on the disclosure document for an enhanced DBS check will include details of the following: spent/unspent convictions, cautions, reprimands and final warnings held at national level, (plus information on pending prosecutions or relevant non-conviction information – this additional information is **not** sent to individuals).
- 2.2 The purpose of Enhanced Disclosure is to protect the public from harm and to protect the reputation of the Council by identifying Members who are unsuitable for positions involving contact with children and vulnerable people. Torbay Council will comply with the DBS Code of Practice and will not discriminate unfairly against the Member on the basis of conviction or other details revealed.
- 2.3 Any Member who wishes to be considered by the Council for appointment to any position within or outside the Council in which they will have regular contact (or are in a position of authority over those with regular contact) with children or vulnerable adults will be disqualified from such appointment where their disclosure reveals a relevant conviction or caution.

3. Using an Existing Disclosure

- 3.1 Disclosures from other organisations will not be accepted by the Council. All Members referred to in 1.1 above will be required to undertake a Torbay Council DBS check.

4. Frequency of Disclosure

- 4.1 Applicable Members will be required to undergo an Enhanced Disclosure check from the Disclosure and Barring Service (DBS) within 28 days of their appointment. Members may be required to undertake further checks within three years of their original disclosure.

5. Confidentiality, Retention, Security and Disposal of Disclosure Information

- 5.1 Disclosure information will only be made available to staff authorised to receive it in the course of their duties. All positive disclosure information will be sent directly to the Lead Counter signatory in the Human Resources Department and will only be divulged to the Monitoring Officer.
- 5.2 A record will be kept of the date of issue of a disclosure, the name of the subject, the type of disclosure requested, the appointment for which the disclosure was requested, the reference number of the disclosure and the details of any decision taken whether or not the Member was disqualified from holding a specific position of responsibility. The record will be kept on a computerised system. Positive disclosures will be destroyed by means of shredding once the disclosure has been discussed with the individual.

6. Positive Disclosure

- 6.1 Following a positive disclosure, the Member will be given the opportunity to be interviewed by the Monitoring Officer and a member of the Human Resources Department so that further consideration may be given, clarifying the circumstances relating to the matters appearing on the disclosure. If the Member declines the opportunity to be interviewed or fails to co-operate in the process, the Monitoring Officer may draw a negative inference from this refusal or failure and act accordingly. The Monitoring Officer will give proper and reasonable consideration to any representations made by the Member. The Monitoring Officer may, where appropriate, in view of the nature of the positive disclosure(s) received, make proportionate recommendations in accordance with paragraphs 6.2 and 6.3. These recommendations may relate to:
- (a) whether or not the disclosure should disqualify the Member from holding a specific position of responsibility or appointment to outside bodies; and/or
 - (b) whether any other restrictions should be made in relation to the Member.

Examples of this might include:

- (i) a recommendation that a Member previously convicted of defrauding a vulnerable adult should not be nominated by the Council to serve on the Board of the Integrated Care Organisation or have portfolio responsibility for this area; or
 - (ii) a recommendation that a Member alleged (but not convicted) to have committed offences against children should not be appointed as Children's Champion or have portfolio responsibility for this area.
- 6.2 The Monitoring Officer will inform the Chief Executive of all positive disclosures (following the review process, if requested by the Member) and may make recommendations to the relevant Group Leader and Deputy Group Leader (or other senior Group Member(s) if the Member is the Leader or Deputy Group Leader) and/or the Leader of the Council if the Member concerned is a Cabinet Member regarding the suitability of the Member for appointments to positions of special responsibility or outside body.

- 6.3 The Monitoring Officer may make recommendations to the Member concerned (for example that they do not serve on certain bodies).
- 6.4 The purpose of this Protocol is to protect children and vulnerable adults and in promoting this objective a precautionary approach shall be adopted. Unless a Member who is the subject of an apparently relevant positive disclosure is able to satisfy the Monitoring Officer (on the balance of probabilities) that the disclosure does not relate to him/her the Monitoring Officer shall normally assume that the disclosure does relate to the Member and act accordingly.

7. Challenging a Disclosure

- 7.1 If a disclosure has been received and the contents discussed with the Member and they inform the Monitoring Officer that the information is incorrect, the person will be referred to the Disclosure Dispute Line, telephone 0300 0200 190. Unless the Member co-operates fully with this referral, the Monitoring Officer may draw a negative inference from this refusal and act accordingly.
- 7.2 The disclosure will not be retained for more than six months after the resolution of the dispute. If it is necessary to retain the disclosure information for a longer period, the Disclosure and Barring Service (DBS) will be consulted. In dealing with such a case, the DBS will give full weight to the rights of the subject of such information under the Human Rights and Data Protection Acts.

8. Refusal to Undertake Disclosure

- 8.1 The requirement for Members to undertake an Enhanced Disclosure check from the DBS is a local provision adopted by Torbay Council.
- 8.2 Any Member who refuses to undertake an Enhanced Disclosure will be disqualified from being appointed to any position of special responsibility or outside body.