

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	15 th December 2010
3.	Title:	CRB Checks for Elected Members
4.	Programme Area:	Chief Executive's Office

5. Summary

A briefing on the requirement for members to have CRB checks was considered by the Members' Training and Development Panel on 21st October 2010 and the Assistant Chief Executive (Legal and Democratic Services) instructed to submit a report on CRB checks of elected members to the Performance and Scrutiny Overview Committee and the Cabinet.

The report details the background to CRB checks, the current state of the law and concludes that, in discharging their role as councillors, members do not currently require a CRB check unless they have frequent unsupervised access to children or vulnerable adults.

The report refers to the *Criminal Records Bureau Code of Practice*, which among other things requires bodies registered with the Bureau to have a written policy on the handling, sharing, retaining, storing, copying and disposing of information disclosed by a CRB check. The Council would have to have such a policy if the Cabinet is minded to require all members of the Council to have a CRB check.

The Vetting and Barring Scheme which underpins the categories of persons subject to a CRB check, is currently under review and may result in changes in the law.

The report includes an appendix in which relevant frequently asked questions from the Criminal Records Bureau website are reproduced for members' information.

6. Recommendations

That Cabinet decide whether:-

CRB checks of members are currently unnecessary unless a member has frequent unsupervised access to children or vulnerable adults.

7. Proposals and Details

Rehabilitation of Offenders Act 1974

Criminal Records Bureau (“CRB”) checks are made in certain circumstances to find out whether a person has a relevant criminal conviction. They are an exception to the policy of the Rehabilitation of Offenders Act 1974 that a person convicted of a crime, or cautioned in connection with a crime, is considered rehabilitated and the slate wiped clean after a prescribed period, providing he or she has not committed further offences during that period. Such convictions or cautions are said to be “spent”.

For example, a conviction is spent:

- after the rehabilitation period of 5 years where a person is convicted and fined for theft;
- after the rehabilitation period of 10 years where a person is sentenced to imprisonment in a young offender institution, or to youth custody or corrective training for not less than 6 months and no more than 36 months.

Once a conviction or caution is spent, for most purposes a person does not have to disclose it when questioned about previous convictions or offences. There are however two exceptions to the rule that spent convictions need not be disclosed: the rule does not apply: (i) to persons employed in certain occupations; and (ii) to persons who work with children or vulnerable adults. Consequently, anyone wishing to follow one of the excepted occupations or work with children or vulnerable adults must undergo either a standard or an enhanced CRB check.

Standard and enhanced CRB checks

A standard CRB check discloses details of all convictions and cautions. The office of councillor is not an excepted occupation and therefore members with convictions or cautions are entitled to treat them as spent and need not disclose them after the end of the relevant rehabilitation period.

An enhanced CRB check is required where a person wishes to do any work involving caring for, supervising, training or being in sole charge of children or vulnerable adults, where the person will have frequent unsupervised access to those children or vulnerable adults. In addition to convictions and cautions an enhanced CRB check also includes a check of lists of persons barred from working with children or vulnerable adults as well as any relevant and proportionate information from local police databases.

Members and CRB checks

In their role as councillors, few if any members will have frequent unsupervised access to children or vulnerable adults. However, the Safeguarding Vulnerable Groups Act 2006 empowers the Secretary of State to make regulations extending the requirement for CRB checks to a larger group, including councillors and officers carrying out certain duties, (for example the Cabinet member for Children & Young People, the Chief Executive and the Strategic Director of Children & Young People’s Services). Consequently, unless and until such regulations are made, only those members with frequent unsupervised access to

children and vulnerable adults could be legally compelled to undergo a CRB check. This will rarely be the case.

A member would therefore be entitled to refuse to undergo a CRB check notwithstanding the minute of the Cabinet requiring all members to have one. Requiring every member of the Council to have a CRB check could be seen as an unnecessary and disproportionate intrusion into members' private lives and therefore breach article 8 (respect for private and family life, the home and correspondence) of the Human Rights Act 1998. And it would also be contrary to the policy of the 1974 Act, which is that persons convicted of or cautioned for a crime are entitled to a fresh start, unless they are working in certain occupations or have frequent unsupervised access to children or vulnerable adults.

Only council employees who work regularly with children or vulnerable adults, or who have extensive access to the records of children and vulnerable adults, have to have a CRB check. Thus a social worker is required to have a CRB check but a child care solicitor is not unless he or she is a member of the Children's Panel, which requires all of its members to have a CRB check as the Panel includes private sector solicitors who work regularly with children.

If the Council is minded to require all of its members to have a CRB check, it will be necessary to draw up a policy on the treatment of the information collected, in order to comply with the *Criminal Records Bureau Code of Practice* and steps put in place to ensure members with a criminal past are not unfairly discriminated against.

Questions from Members' Training and Development Panel

The following questions were posed by the Members' Training and Development Panel:

Question 1: Should members of a committee discharging education functions or functions relating to vulnerable adults be required to undergo an enhanced CRB check?

Answer: Almost certainly not. This is classed as a regulated activity under the 2006 Act but the provisions in the 2006 Act in relation to monitoring persons classed as engaged in a regulated activity are not yet in force. It is also classed as a controlled activity where members of a committee (or a Cabinet member) discharging educational or social services functions in respect of children –

- meet frequently (Criminal Records Bureau defines this as "once a week for most services, except for health and social care services which involves personal care when it is once a month or more"); and
- have the opportunity to have access to health, educational or social services records relating to children or information provided under section 72 of the Education and Skills Act 2008 (educational institutions: duty to provide information).

It is also a controlled activity where members of a committee (or a Cabinet member) discharging social services functions in respect of vulnerable adults –

- meet frequently or on more than 3 days in any period of 30 days; and

- have the opportunity to have access to the health records or social services records of a vulnerable adult.

Question 2: Should members have CRB checks in their role as “corporate parents”?

Answer: No. A CRB check would only be necessary if a member had the opportunity of frequent, unsupervised access to children or had the opportunity to have access to children’s health, educational or social services records.

Question 3: Is it necessary for members to have multiple CRB checks in relation to the different functions that members undertake in their role as community leaders, including contact with young children and vulnerable adults?

Answer: Whether a CRB check is required is for the organisation concerned to decide. Some members have undergone CRB checks as a requirement of becoming school governors or charity trustees. CRB checks are not currently shared between different organisations. Once someone has had a CRB check for one role and wishes to pass it to another organisation or employer, it is up to that organisation whether it accepts the check or requires another one to be completed. A suggestion by the public to allow employers to share CRB checks has been taken up by the coalition government but will require legislation before this can be done. The Criminal Records Bureau is working up detailed proposals to this end.

Section 13 of the 2006 Act, which is not yet in force save for the purpose of making regulations, will make it an offence to act as a member of a governing body without having had an enhanced CRB check.

Question 4: How long do CRB checks last, particularly in the case of social services’ functions?

Answer: CRB checks do not last for a set period because a conviction or other matter could be recorded against the person who is the subject of the CRB check at any time after it is issued. It is normally recommended that checks are carried out at least every 3 years.

Vetting and Barring Scheme

The Vetting and Barring Scheme was established following the Bichard Inquiry into the Soham murders. It is a partnership between the Independent Safeguarding Authority and the Criminal Records Bureau. The Bureau is responsible for CRB checks and the ISA is responsible for making decisions about and maintaining lists of persons who are barred from working with children and vulnerable adults. The Vetting and Barring Scheme is currently under review and therefore some of the measures outlined in this report may result in changes in the law.

8. Finance

There is a cost for each CRB check completed. A Standard CRB check costs £26.00 and an enhanced CRB check costs £36.00. Therefore if the Council did an enhanced CRB check for each elected member every 3 years, the cost would be £2268 every 3 years.

9. Risks and Uncertainties

- Risk to vulnerable persons if CRB checks are not completed where necessary.
- Risk of breach of article 8 of the Human Rights Act.

10. Policy and Performance Agenda Implications

The Council has a duty to protect children and vulnerable adults in its care and must take all necessary and proportionate measures to ensure their safety.

11. Background Papers and Consultation

Rehabilitation of Offenders Act 1974
Safeguarding Vulnerable Groups Act 2006

Contact Name: Richard Waller, Non-contentious Team Leader, Legal & Democratic Services, Richard.waller@rotherham.gov.uk
Tel: ext 3553

APPENDIX

CRIMINAL RECORDS BUREAU FAQs

How do I find out if I am eligible to get a CRB check?

The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 lists the types of work, employment or professions on which you can legally obtain a CRB check.

Alternatively, your employer is ultimately best placed to assess whether a Standard or Enhanced CRB check is required for a specific role, bearing in mind their legal and other responsibilities

To note: *CRB regularly receives enquiries regarding checks being a mandatory requirement when tendering for contracts. Organisations insist that a condition of a tender bid is that all staff will be CRB checked. In many cases the work or services of the contract would not require a CRB check.*

A familiar misconception surrounds contractors whose services involve working in council or private dwellings and thus assume that individuals living alone, especially the elderly, are all vulnerable.

If any contracting authority or tenderer is unsure if a position of employment warrants a CRB check they should contact the Customer Service department at CRB at customerservices@crb.gsi.gov.uk or call 0870 90 90 811.

It should be noted that it is illegal to insist that a CRB check forms part of a tender, unless the services provided meet the criteria for an eligible CRB check as defined by the Exceptions Order of the Rehabilitation of Offenders Act 1974.

Why might I be asked to apply for CRB checks?

You may have been asked to apply for a Standard or an Enhanced CRB check if:

- you will be working with children or vulnerable adults;
- you will be working in an establishment that is wholly or mainly for children;
- you will be working in healthcare; or
- you have applied to be a foster carer, adoptive parent or childminder.

A CRB check may also be required for a range of other types of job or licences.

Enhanced CRB Check

Enhanced checks are for posts involving work in a regulated activity for a regulated activity provider 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.

Enhanced checks contain the same information as Standard checks but with the addition of a check of the new barred lists if requested and any locally held police force information considered relevant to the job role, by Chief Police Officer(s).

What information is available through a CRB Check?

A CRB check can provide access to a range of different types of information, such as, information:

- held on the Police National Computer (PNC), including Convictions, Cautions, Reprimands and Warnings in England and Wales, and most of the relevant convictions in Scotland and Northern Ireland may also be included. (The CRB reserves the right to add new data sources)
- held by local police forces and other agencies, relating to relevant non-conviction information;
- held on lists maintained by the [Independent Safeguarding Authority](#) (ISA);
- Other data sources such as
- British Transport Police <http://www.btp.police.uk/> (new window);
- the Royal Military Police <http://www.army.mod.uk/> (new window);
- the Ministry of Defence Police <http://www.modpoliceofficers.uk/> (new window)
- Scottish Criminal Records Office (SCRO) - if you have spent any time living in Scotland.

Not all applications for those working with children or vulnerable adults will be eligible for a check against lists held by the **Independent Safeguarding Authority (ISA)**.

How long is a CRB check valid for?

Each CRB check will show the date on which it was printed.

CRB checks do not carry a pre-determined period of validity because a conviction or other matter could be recorded against the subject of the CRB check at any time after it is issued.

I already have a CRB check, can I use it again?

If you are asked to apply for a CRB check and you already have one for a previous role you can ask if the organisation is willing to accept it.

When making this decision the organisation will take into account the length of time that has elapsed since that CRB check was issued; the level of CRB check; the nature of the position for which the CRB check was issued; and the nature of the position for which you are now applying. Ultimately, it will be the organisation's decision whether to accept it or not.

Can I refuse to apply for a CRB check?

Yes. However, there are some posts for which a CRB check is required by law. If you refuse to apply for a CRB check in this instance, the organisation may not be able to progress your job or licence application any further.

If you are currently working and your employer asks you to apply for a CRB check, you may be able to refuse if your contract of employment does not refer to a criminal record check, unless a change in legislation has made such a check mandatory.

What is regulated activity?

Regulated activity is defined as:

- Activity involving contact with children or vulnerable adults and is of a **specified nature** (e.g. teaching, training, care, supervision, advice, medical treatment or in certain circumstances transport) on a **frequent, intensive and/or overnight** basis;
- Activity involving contact with children or vulnerable adults in a **specified place** (e.g. schools, care homes etc), frequently or intensively;
- **Fostering and childcare**;
- Certain **specified positions of responsibility** (e.g. school governor, director of children's services, director of adult social services, trustees of certain charities).

These positions are set out in the Safeguarding Vulnerable Groups Act 2006.

What is controlled activity?

Controlled activity, which is much more limited in scope, affecting around 500,000 people, is defined as covering the work of:

- ancillary support workers in FE, NHS and adult social care (e.g. cleaner, caretaker, catering staff, receptionist) which is done frequently and gives the opportunity for contact with children or vulnerable adults;
- people working frequently for specified organisations (e.g. local authorities in the exercise of its education or social services functions) in roles which give them the opportunity for access to sensitive records about children or vulnerable adults;
- barred people can sometimes be employed in controlled activity, providing tough safeguards are in place, such as stringent supervision;
- a person barred as a result of a relevant autobar caution or conviction will not be able to work or volunteer in controlled activity in Wales.

What is frequently, intensively and/or overnight?

- **Frequently** is currently defined as 'once a week' for most services, except for health and social care services which involves personal care when it is 'once a month or more'

- **Intensively** takes place on '4 days in one month or more'
- **Overnight** takes place between 2-6 a.m.
-

What is the definition of a Vulnerable Adult?

A vulnerable adult is a person who is aged 18 years or older and:

- is living in residential accommodation, such as a care home or a residential special school;
- is living in sheltered housing;
- is receiving domiciliary care in his or her own home;
- is receiving any form of health care;
- is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;
- is in contact with probation services;
- is receiving a welfare service of a description to be prescribed in regulations;
- is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions. (age-related needs includes needs associated with frailty, illness, disability or mental capacity);
- is an expectant or nursing mothers living in residential care;
- is receiving direct payments from a local authority/HSS body in lieu of social care services;
- requires assistance in the conduct of his or her own affairs.

Will I need to be CRB checked if I am working as Father Christmas or one of his helpers?

If an individual is working or volunteering as Father Christmas or one of his helpers in a specified setting e.g. schools; childcare premises including nurseries; residential homes for children in care; children's hospitals; children's detention centres, and is undertaking that work frequently (once a week) or intensively (4 or more occasions in one month) then they will be eligible for an Enhanced CRB check.

This scenario is not intended to cover a Father Christmas or his helpers who might be employed in a department store or shopping centre as they are not listed in the Safeguarding Vulnerable Groups Act 2006 as specified settings.

CRB Check Category Codes (Eligible Positions)

The categories listed below represent the professions, offices, employments, work and occupations that are known as the exceptions to the Rehabilitation of Offenders Act 1974.

Organisations registered with the CRB can only apply for a CRB Check if the position is included in this list. The code number listed next to each section refers to the Disclosure Access Category Code.

From the 12th October 2009, the old category codes 1 to 10 have changed to reflect the extended eligibility for Enhanced CRB checks due to the introduction of the Vetting and Barring Scheme. The definition of 'Regulated Activity' as described within the Safeguarding Vulnerable Groups Act 2006, in so far as it relates to working with children and vulnerable adults, is referred to in the revised category codes 01 and 02. Please ensure that you only use the category codes listed below as category codes 07-10 no longer exist. The links provided will take you to the relevant schedule within the act.

You should select the code that most closely identifies with the work for which you are asking the exempted question.

Category type	Category Code
Any work which is defined as regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006	01
Any work which is defined as regulated activity relating to vulnerable Adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006	02
Any office or employment which is concerned with the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services	03
Any work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18	04
Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of persons under 18	05
Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of vulnerable adults within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006	06