



Report – Policy and Resources Committee

Criminal Records Bureau Rechecking

*To be presented on Thursday, 17th January 2013
To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

Summary

1. At its meeting on 19th January 2012 the Court considered a report on the introduction of a Criminal Records Bureau (CRB) re-checking process for relevant members (every 4 years from the date of first election to a relevant Committee/Board). The Court asked Officers to consider the potential impact of the Protection of Freedoms Bill on the CRB checks process. The Bill was enacted in April 2012, the Home Office issued guidance in July 2012 and the first phase came into force in September 2012. On 1st December 2012 the CRB became part of the new Disclosure and Barring Service (DBS) but the disclosures will continue to be referred to as CRB in the report for ease of reference in relation to previous reports. This has led to revised proposals being considered and supported by your Policy and Resources Committee, the various School Boards and the Community and Children's Services Committee.
2. The changes to the national disclosure regime brought about by the Protection of Freedoms Act, mean that checks and re-checks on Members should now be carried out where they have relevant contact with children and vulnerable adults, and not simply by virtue of their membership of a previously relevant Board of Committee.

Recommendations That:-

- a) the fact that legislation now requires a CRB check be carried out on any Member whose work with children or adults (through the City of London Corporation) meet the relevant criteria be noted. Automatic checks for all Members of previously relevant Committees and Boards would, therefore, cease;
- b) the introduction of an annual review and self-declaration process be approved to ensure that relevant Members who are eligible for checks are identified; and
- c) re-checking be introduced for Members requiring an initial check, but only at the point when the streamlined national process goes live. Updating checks would then be made every 4 years from the point at which a check is first required and disclosure checks repeated only where required.

Main Report

Background

1. A report was presented to all affected Committees and Boards and the Policy and Resources Committee during late 2011 proposing, at the request of members, to introduce a CRB re-checking process for relevant members (every 4 years from the date of first election to a relevant Committee/Board). When the report was considered by the Court of Common Council in January 2012, officers were asked to consider the potential impact of the Protection of Freedoms Bill on the CRB checks process. The Bill was enacted in April 2012 and the Home Office has now issued guidance on and implemented the changes, enabling the relevant Committees and Boards, and now this Court, to consider a revised proposal.

Current Position

2. The Safeguarding Vulnerable Groups Act 2006 sets out that a) Members of the governing body of an educational establishment and b) Members of a local authority involved in discharging any education or social services functions are subject to enhanced Criminal Records Bureau (CRB) checks.
3. Enhanced CRB checks are currently carried out on Members who sit on the Board of Governors for the three independent schools, the Guildhall School of Music and Drama and the Community and Children's Services Committee; as they are elected. Periodic repeat checks for Members who continue either on one Committee/Board or transfer to other relevant committees with no break in membership are not currently undertaken.
4. The changes introduced by the Protection of Freedoms Act 2012 are (in summary of the relevant sections):
 - a. New definitions of 'regulated activity' in relation to children and adults; the repeal of ISA registration and monitoring, controlled activity, and additional information provisions; and the introduction of a minimum age of 16 for checks. Other changes include a more rigorous relevancy test for locally held and released police information for enhanced CRB checks; and a right to review the information contained in a CRB disclosure for applicants before the organisation sees it; the provision of statutory guidance on what 'supervision' of children means; and some changes to barring criteria.
 - b. Membership of certain local authority committees and governing bodies of educational establishments is currently a "regulated activity" under the Safeguarding Vulnerable Groups Act 2006. The Act removes these functions from the scope of 'regulated' activity, as part of a considerable reduction in the scope of the scheme, but imposes a duty to check out checks where relevant 'regulated' or 'supervised' activity is undertaken. Where relevant, the check will provide organisations with information about whether an individual is barred from working in regulated activity with children and vulnerable adults.
 - c. From 2013; there is a simplified arrangement which combines the work of the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) into the Disclosure and Barring Service (DBS). Checks will be portable and there will be an updating process for checking if any

changes have occurred since the original certificate was provided. If changes have occurred, a new disclosure can be requested.

5. The Home Office confirmed in July that the first phase of changes, including the removal of the statutory position checks, came into force in September 2012. There has only been one new member appointment since that time but this report allows a policy to be put in place for the future.

Proposals

6. From September 2012 there will no longer be any legal duty to make enhanced criminal record checks on Members simply by virtue of their appointment to a relevant Committee or Governing Body. However, there will be a duty to carry out enhanced CRB checks where Members otherwise meet the criteria for 'regulated' activity (the criteria relate to type, regularity and place of interaction) or 'supervised' activity (the criteria relate to supervision arrangements such as who is supervising, and the regularity and reasonableness of supervision). Those engaged in 'regulated' activity or carrying out 'supervised' paid work in a specified place (including schools) will need an enhanced CRB check along with a check of the relevant ISA Regulated Activity Registers (sometimes referred to as the 'barred lists'). Those carrying out other 'supervised' activity, (such as supervised voluntary work in schools) will require a check under a new category of 'Police Act 1997' Disclosure; which is an enhanced check, but without searches of the barred lists. This is the category Members will most likely fall under.
7. The proposal is, therefore, only to check members who meet the new criteria by virtue of the nature of their work on behalf of the City Corporation a) giving them supervised or regulated access to children and/or b) engaging them in relevant activities in relation to adults. This would be achieved through the relevant school or department reviewing annually to see if any Members will be likely to meet either of the two sets of criteria (clearly if it becomes apparent at any point that they are meeting the criteria, then a check should be actioned immediately). This will be supplemented by a process of self-declaration by any member who feels they may meet the criteria as a result of their activities across different Corporation schools/activities or changing levels of involvement over time. The Schools and relevant departments have been consulted on this and are content that this process can be managed. Full guidance on the definitions will be made available and the schools /departments and Corporate HR will be able to advise members on whether they are likely to require a check, and if so, at what level.
8. This approach reduces the administrative burden and bureaucratic process, is consistent with Government expectations, and ensures we are confident in meeting the CRB eligibility criteria (the CRB has the power to remove a body's registered status if they continually submit ineligible checks).
9. In relation to the options for re-checking, the legislation introduces an Updating Service whereby once an original certificate has been issued it will be possible to check with the CRB whether there have been any changes to a person's record since that time (maximum frequency annually). If there has been a change then a new disclosure check can be applied for to update the disclosure information available. If not, the organisation can assume there has been no

change in the record and will not need to request a new certificate. This process has been introduced to vastly simplify re-checking and reduce associated costs; however, there are no statutory requirements for re-checks, or Government recommendations as to the frequency of re-checks. There has been no implementation date agreed for this process but it is timetabled for 2013. Costs for the Update Service have not yet been published but the Home Office have said it will be significantly cheaper than a full check (current estimates are at least 75% cheaper). Portability of checks will also come into effect at that time, and is another measure that will reduce the number of checks needed to be carried out on each person where they have multiple relevant roles across different organisations.

10. It is recommended that re-checking against the Update Service is undertaken for Members that qualify for checks under the new definitions, but only at the point when the national service goes live to ensure the process is as efficient as possible. This would take the form of an update request every 4 years, in line with the original proposal agreed by the relevant Committees and Boards. Applications for new CRB disclosures will only be made where the update notification indicates there is a change to the record. Members will be given guidance on this process and advance notice of the date of introduction when it becomes available from the Home Office.
11. If this proposal is agreed, a short guidance note for Members would be produced on the disclosure process, criteria and expected standards.

Corporate & Strategic Implications

12. This proposal fits with the efforts to reduce bureaucracy but still maintains our commitment to managing a disclosure and barring process consistent with Government expectations.

Implications

13. The financial implications are minor as costs were small in the first place (a notional maximum of £3,700 for initial checks). There will be a smaller number of initial checks required and update checks will be significantly cheaper (and only undertaken ever 4 years); so we are likely to see costs reduce and not increase. In order to manage risk, those Members with relevant contact with children and vulnerable adults will still be checked, and this approach is in line with Government expectations.

Conclusion

14. In order to implement the changes to the national disclosure regime brought about by the Protection of Freedoms Act, checks and re-checks on members should now be carried out where they have relevant contact with children and vulnerable adults.

All which we submit to the judgement of this Honourable Court

DATED this 4th day of October 2012
SIGNED on behalf of the Committee

Mark John Boleat
Chairman