

FALKIRK COUNCIL

Subject: PROTECTION OF VULNERABLE GROUPS SCHEME
Meeting: EXECUTIVE
Date: 18th March 2014
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1. INTRODUCTION

- 1.1 Members may recall the report presented to Policy & Resources Committee on 8th February 2011, which provided background information on the Protection of Vulnerable Groups (Scotland) Act 2007.
- 1.2 Since then a number of related issues have been raised. This report outlines the main outstanding issues for consideration by Members.

2. THE PROTECTION VULNERABLE GROUPS SCHEME

Background to PVG

- 2.1 Members will be aware that the Protection Vulnerable Groups Scheme (PVG) came into effect on 28th February 2011. From this date, any employee working in regulated work (children and/or adults), commencing or changing employment within the Council has been required to be PVG registered. This also relates to other groups undertaking regulated work, such as foster carers, volunteers, Modern Apprentices, taxi drivers and bus drivers. Existing employees are due to be migrated onto the scheme over a 4 year period.

Scheme Membership Process

- 2.2 Members will recall that there are 3 types of checks that can be undertaken, 2 of which are appropriate for use in Falkirk Council:
- 2.3 Full Scheme Record – This replaced an enhanced disclosure for those working in regulated work and indicates whether a person is barred from working with children and/or vulnerable adults. The Scheme Record is portable, meaning it is not specific to a particular post and also means that the membership is transferable between different employers. A full scheme record currently costs £59.
- 2.4 Scheme Record Update – This is designed for use by organisations when asking an individual who is already a PVG member to undertake regulated work. An organisation can request this for a new employee who is already a Scheme member or repeat checking an existing employee who is a Scheme member. The update indicates whether any new vetting information has been added to the person's record, although the information is limited. Where new conviction information is identified, a Full Scheme Record will require to be requested (at £41 additional cost). A scheme Record Update currently costs £18.

3. PAYMENT ARRANGEMENTS

Payment of Full Scheme Record Membership Fees (New Starts)

- 3.1 In February 2011, Members agreed that employees should pay the cost of the Full Scheme Record, although payment is recovered from employees, over a 6 month period.
- 3.2 Since then a number of associated issues require to be clarified and considered. These matters are noted below for consideration.

Modern Apprentices & Casuals

- 3.3 Following implementation, concern was raised by some Services over the impact on Modern Apprentices and Casuals. Currently, there are approximately c110 annual PVG checks processed for Modern Apprentices, at a total cost of c£6,490 per annum. Consideration should be given to whether, given their low pay, Modern Apprentices should pay their Membership, or whether this should continue to be paid by the Council. Whilst the hourly rate paid to this group is lower than that of other employee groups, as a result of them being on a training programme, Modern Apprentices may have an overall higher take home pay per week than some part time employees who are currently required to pay for their Membership. Members are reminded that Membership is transferable and Modern Apprentices will be able to use their Membership throughout their future career, and their service is considered continuous for the purposes of employment. Given the low training allowance payable to this group and the fact that they are on a training programme, the Employment Training Unit are of the view that this should continue to be paid by the employer as part of the training agreement.
- 3.4 Should Members consider it appropriate that Modern Apprentices pay the cost of their Membership, Modern Apprentices could be offered an extended repayment period e.g., over a 12 month period, although this is not offered to other part time employees who have similar or lower levels of overall take home pay.
- 3.5 Payment arrangements for casual/pool workers have also been raised as an issue. Casual workers are required to repay the cost of any PVG Membership processed. Whilst this group of workers require to gain membership, they are not guaranteed any hours/work to recover the cost and may have a minimum/low number of hours being paid in any given pay cycle. They may not therefore have any wage/salary or consistent salary over the 6 month payment recovery period. In these cases, the recovery of payment may take longer than 6 months, as the deduction is only made if the casual has worked and received a salary. Concern has been raised by Services over these arrangements, specifically whether this would impact on the ability to attract casual workers. Consideration should therefore be given to whether the same payment arrangements apply to Casuals.

Payment for Scheme Record Updates

(New starts and future repeat checks [see section 4 on repeat checks])

- 3.6 Section 2.4 of the report explains the new Update certificate. This is used when an existing Scheme Member joins the Council for the first time or if repeat checking is required. In summary, repeat checks, although not mandatory, can be carried out on a regular basis to identify any new conviction information to ensure continued fitness to undertake regulated work (see section 4 for more information). It would be up to each organisation to determine whether repeat checks are required and if so, the frequency of such checks.

3.7 Whilst Members previously agreed that employees would pay for full Scheme Membership, i.e., £59, Scheme Record Updates at £18 have been paid by the Council.

3.8 It is suggested that Members consider whether this approach is appropriate. Before coming to a decision on this matter, Members may wish to consider the following information:

- The cost of Updates is difficult to estimate as the number of new appointments into regulated work is unknown, as is the number of these new appointments who will already have full scheme membership. Based however, on historical turnover data, the estimated cost to the Council is c£10k per annum. This will reduce if any new appointments require Full Scheme Membership as the individual will pay for this themselves.
- The appropriateness and regularity of repeat checking and the consequential cost: This is explained in detail in section 4. In summary, if repeat checking of our existing workforce is required on a 3 yearly basis, this would cost approximately c£25k per year, whereas if this was done over a 5 year period, this would cost approximately c£15k per year.
- Members may wish to consider different arrangements for new starts and repeat checks for existing employees. This approach has been taken in other Local Authorities which would increase employee engagement/morale of the current workforce, however it would also increase the cost to the Council. The Trade Unions would be likely to be more supportive of this approach.

New Conviction information identified on Scheme Record Update: additional cost of Full Scheme Record for new starts or future repeat checks (see section 4)

3.9 If Members agree that it is appropriate for the Council to pay for any Scheme Record Update, consideration needs to be given to the additional cost of any necessary Full Scheme Record. As previously noted in 2.4, there can be situations where an Update is requested initially, but due to new convictions being identified a Full Scheme Record, at an additional cost of £41, is required. In these situations, Members require to decide whether the difference is payable by the new start/employee or by the Council.

Payment Options for the Migration of the Current workforce

3.10 All current employees in regulated work with the Council require to gain PVG Scheme Membership by 29th October 2015. This requires checks to be carried out after commencement of employment and is known as retrospective checking. Disclosure Scotland opened this migration process on 29th October 2012 and require retrospective checks to be completed for the current regulated workforce by 29th October 2015.

3.11 The intention was to commence this process in Education Services. The EIS however, advised their members not to participate in the process as they object to their members being asked to pay the £59 membership fee. They have questioned whether this is a contractual requirement and if so, that any period of repayment be agreed with Trade Unions.

3.12 The EIS are also of the view that any current employee who is required to pay for scheme membership has until October 2015 to migrate to the scheme and therefore is looking for an agreement on the timing of retrospective checks to be made with Trade Unions.

- 3.13 A report was originally considered on this matter in November 2010 at JCC, at which time, 'Trade Unions' noted their concerns over payment arrangements, with their preferred approach being that the Council pay the fees on behalf of the employees. The 'Trade Unions' view on payment terms and the suggestion that the PVG migration/retrospective checks commence in Education was noted in the report to Policy & Resources Committee in February 2011.
- 3.14 The EIS has however, accepted that temporary and supply teachers should be required to pay their own membership fees.
- 3.15 A decision is therefore required on whether any changes should be made to the payment arrangements for new or existing employees for PVG Scheme Membership. Before coming to any conclusion, Members may be interested to note the position in other Councils. Falkirk Council and with 2 other Councils require existing employees to make the full payment. One of the Councils who previously required employees to pay the full cost of Membership recently changed their approach, partly due to pressure from Trade Unions. With regard to checks carried out as part of the recruitment process, 8 Councils require new employees to pay the full cost with 2 further councils making a part payment (£18) on behalf of the employee. Anecdotal information however suggests that Councils are now reviewing their positions, specifically in relation to increased cost as they are of the view that the original decision of paying such costs may not be sustainable.
- 3.16 It should also be noted that, Disclosure Scotland has been clear that an equal number of migration related checks must be processed each month by each registered body. Given the issues being experienced within Education Services, checks have now commenced in Social Work Services with c1200 checks completed by the end of December. These have progressed well, with no significant issues arising and with relevant employees of varying grades and work patterns paying their own PVG fees.
- 3.17 In respect of payment arrangements for the migration of employees onto the PVG Scheme, a number of options, are available for consideration:
- Option 1: No change to current arrangements
Current employees continue to pay the £59 fee for PVG Scheme Membership. As explained above, there is no guarantee that further issues will not materialise as the checks progress, which could lead to industrial relations/service delivery issues.
 - Option 2: Change arrangements: Council to pay the full cost of PVG checks for existing employees
In total, this will cost c£240k between now and the end of the migration period. As explained, some employees have already paid or are part way through repaying the cost of the PVG membership. If this was the preferred approach, for consistency and equality of treatment, it is suggested that Members consider repaying this group at a cost of c£70k. This would likely be acceptable to the workforce and the Trade Unions.
 - Option 3: Change arrangements: Council to contribute towards cost of PVG, with employee paying remainder.
Whilst this would not cost c£240k, based on the part payment approach taken by other Councils, this would incur a cost of c£75k between now and the end of the migration period. Again, similar issues would require to be considered in respect of payments already made. There is no guarantee that this would be acceptable to the EIS or their members, therefore the same issues of non-participation may exist with this option.

4. REPEAT CHECKING OF EXISTING EMPLOYEES

- 4.1 The Council's current Disclosure Policy confirms that employees should be checked on a 3 yearly basis. Members will be aware that all levels of disclosure checks are one off checks, with no additional information provided thereafter to the employing organisation. Consequently, SCSWIS advised that repeat checks were recommended and therefore the disclosure policy, including the 3 yearly repeat checking process, was introduced to meet this requirement.
- 4.2 As previously explained, with the introduction of PVG, a different approach could be taken, as a PVG member's record is continuously updated with new vetting information and all interested employers will be notified of barred or consideration for listing cases. Employers will however only be notified of an update where the offence is serious enough to be considered for listing (i.e. barred from regulated work). Therefore it may be necessary to carry out future repeat checks of existing employees from time to time. Whilst not all convictions will lead to barring, some convictions may still result in it being inappropriate to allow an employee to continue working in a particular post.
- 4.3 For information, other Councils have mixed approaches to repeat checking for PVG, with some being every 3 years, others every 5 years and others suggesting no repeat checks. The majority however, still require to make a decision on this matter, as work is being concentrated on the migration of the current workforce onto the PVG scheme.
- 4.4 As one of the intentions of the PVG Scheme is to reduce the need for future repeat checking of existing employees, this requirement may benefit from further consideration. Before coming to any decision, Members may wish to consider the following points:
- Regular repeat checking has never been a statutory requirement, but it has been previously recommended by SCSWIS.
 - The Council will be automatically informed if an employee becomes barred from working with a regulated group, i.e., Children and/or vulnerable adults.
 - The Police will inform the Council if an employee within a specific group (e.g., teachers, social workers) is charged/arrested of a serious offence.
 - Disclosure Scotland believe that there is low risk associated to the Council deciding not to agree regular checks.

Options for Repeat Checking of Existing Employees in Regulated Work (PVG)

- 4.5 Option 1: Continue to conduct repeat checks on a 3 year basis.
Currently, the Council re-checks employees on a 3 yearly basis. SCSWIS remain of the view that it would be good practice for organisations to undertake regular repeat checks, although Disclosure Scotland disagrees with this view as organisations will automatically be notified of individuals who are barred/considered for listing. The cost of this would be c£75k over a 3 year period. If this is adopted, the main issue of contention with employees and Trade Unions will be payment arrangements, as there is no legal requirement to undertake repeat checks. Trade Unions therefore, would be unlikely to agree to their Members paying for repeat checks and employees would also likely be aggrieved.
- 4.6 Option 2: Continue to conduct repeat checks, but over a longer period, e.g., 5 years

Same principles as Option 1 apply, although this approach would extend the period for repeat checking. Given the automatic notification if an individual is barred, reducing risk, it may be that the period for repeat checking could be increased to a 4 or 5 yearly programme. This would extend the cost of £75k over a 4 or 5 year period and the same issues regarding payment, as per Option 1, apply to Option 2.

4.7 Option 3: Stop undertaking repeat checks

As explained above, SCSWIS remain of the view that it would be good practice for organisations to undertake regular repeat checks, although Disclosure Scotland disagrees with this view, who consider it to be low risk. This approach will mean that the Council will not be aware of all employees' convictions, some of which may be considered inappropriate to allow an employee to continue working in a particular post.

4.8 A decision is therefore required on whether the Council undertakes future repeat PVG checks for current employees, and if yes, at what frequency and who will pay the fee.

4.9 Casuals, in accordance with current policy, are checked annually. This means that an update is requested on an annual basis to check whether any new conviction information is available. Whilst some casuals are called upon to work frequently, others may not be used regularly, if at all, during the year therefore up to date information may be useful and relevant. The longer the gap in employment, the higher the risk may be, although the Council as an interested party, will be notified by Disclosure Scotland if the individual was to become barred from regulated work. A decision is therefore also required on the frequency of repeat checks for casual workers along with the payment arrangements.

5. **DISCLOSURE CHECKS**

5.1 Disclosure checks continue to be completed for a variety of posts not covered by the new PVG scheme. The fee, currently £25, is paid by Falkirk Council. Generally basic/standard disclosures would cover posts in lower risk occupations such as clerical posts accessing information in Social Work, or posts involving the use of cash, along with standard checks for solicitors and accountants, but latterly also covers a wider range of posts to ensure compliance with the GSX/PSN issues. Any decision in regard to repeat checking for PVG will only impact on those covered by the PVG Scheme. Consideration will also require to be given to whether the timescales operated for PVG repeat checks, if these are to be undertaken, should equally be applied to repeat disclosure checks.

5.2 A decision is therefore required on the frequency of repeat checking for Disclosure Checks. In addition, confirmation of who should pay for this is required. It should be noted that if the employee is asked to pay, this could attract a very negative response from Trade Unions and employees given that there is no specific legal requirement for these checks.

5.3 Members should note that under the new requirements for GSX/PSN access, within a 3 year period, all employees with general access to a PC will require to be disclosure checked to ensure compliance. Work is still being undertaken to assess final numbers, however it is envisaged that this will require an additional 1,500 to 2,000 checks at a cost of £25 each, equating to c£37.5k to c£50k.

5.4 In respect of Casuals, the current policy requires this group to have disclosure checks completed on an annual basis, which is paid by Falkirk Council. This is extremely costly,

especially if they are not used regularly and require annual disclosure certificates. A decision is therefore required on the frequency of repeat checking for casual workers and if agreed, who should pay for the disclosure.

6. DISCLOSURE POLICY

- 6.1 The Disclosure Policy requires to be updated to reflect the introduction of the PVG Scheme, along with any changes agreed as part of this report.

7. RECOMMENDATIONS

- 7.1 It is recommended that Members:

- i. note the issues relating to Modern Apprentices and Casuals, as detailed in paragraph 3.3 to 3.5 and confirm payment arrangements in respect of PVG Scheme Membership including repayment periods for these 2 groups;
- ii. agree whether the Council or individual should pay for Scheme Record Updates for new starts, as detailed in paragraph 3.6 to 3.8;
- iii. agree payment arrangements for any additional cost incurred from a Full Scheme Record, where this is required due to conviction information being disclosed on any Scheme Record Update, as detailed in paragraph 3.9;
- iv. note the issues raised by the EIS as detailed in paragraphs 3.10 to 3.17, and confirm payment arrangements for Full Scheme Records for all existing employees across all Services, migrating to the new PVG scheme;
- v. agree whether repeat checking for those covered by the PVG Scheme should be implemented and if yes, the frequency of this and who should pay for the check, as detailed in paragraphs 4.1 to 4.8;
- vi. agree whether repeat checking for casuals covered by the PVG Scheme should be implemented and if yes, the frequency of such checks and who should pay for the check, as detailed in paragraph 4.9;
- vii. agree whether repeat checking for those covered by Disclosure checks should be continued and if yes, the frequency of this and who should pay for the check, as detailed in Section 5;
- viii. agree whether repeat checking for casuals covered by Disclosure checks should continue and if yes, the frequency of this and who should pay for the check, as detailed in paragraph 5.4
- ix. agree that the Disclosure Policy be amended in accordance with the decisions taken by the Executive.

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DIRECTOR OF CORPORATE & NEIGHBOURHOOD SERVICES

Date: 04 March 2014
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LIST OF BACKGROUND PAPERS
P&R report of 8th February 2011