

Home Affairs Select Committee – January 2014
Inquiry into Police and Crime Commissioners

Written evidence from Cumbria Police and Crime Panel [PCC Progress 13]

..... the Cumbria PCP would like to raise the issue of Panels' powers in relation to dealing with complaints about Police and Crime Commissioners. As you may be aware the Cumbria PCP has dealt with a number of complaints relating to the commissioner largely in relation to one specific incident and as such has a reasonable experience of this process.

The current powers are limited and do not enable the Panel to undertake any investigations into the issue beyond asking the Commissioner's Office to respond to the points raised, to see if they can be resolved and an explanation or clarification provided. The Panel then pass this information to the complainant and try to broker an informal resolution. There are no powers actually attached to this and in effect the Panel have no real powers to take any action regarding non-criminal complaints beyond raising any issues publically through the Panel meetings.

Members of the Panel feel that this system can lead to false expectations from complainants who may expect that further independent investigative work could be undertaken or actions result if the complaint is perceived to be upheld by the Panel. As may be expected informal resolution is not always possible and yet there is very little the Panel can practically do beyond this point.

The Panel would therefore request that as part of your review you explore the current powers available to Police and Crime Panels with a view to considering recommending to Government that they be extended.

**Written evidence from the Hampshire Police and Crime Panel [PCC Progress
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The Panel's Complaints Sub-Committee has used considerable resource in the past year in order to review non-criminal complaints made against the Commissioner. The Panel's powers in relation to any non-serious complaint are minimal in comparison to the time taken to review and conclude complaints. This power could be reconsidered in light of either increasing or reducing this function, to either enable Panels to investigate and apply appropriate actions to a complaint, or for another organisation or body to take on responsibility to considering such complaints.

Written evidence from West Yorkshire Police and Crime Panel

The Panel feels that it has been unable to add value to the complaints process. Where complaints are serious (that is, of a criminal nature), they are referred to the IPCC. Where complaints are not serious and informal resolution can be sought locally, our experience is that the likelihood of a satisfactory outcome being reached for the complainant and PCC is very slim (as previous resolutions will have been unsuccessful, resulting in the complainant turning to the Panel). The investigation and attempted resolution of complaints consumes a significant amount of time and resource.

Written evidence from the Centre for Public Scrutiny

Over the course of our research, and since it has been completed, a number of different proposals have been put to us as to how Panels' remit and role could be changed, and/or how a new system for policing accountability could be introduced, should a future Government decide to abolish PCCs and Panels altogether. We have also developed some ideas about ways in which improvements could be made within the existing statutory framework.

Some possibilities which would require changes in the law include:

- Removing some of the Panel's powers, to focus it more on the PCC's business planning cycle and to ease pressure on resources. Confirmation hearings and the resolution of complaints are two statutory powers that have taken up the most resource for the least comparable effect in terms of outcomes. However, there is an argument that removing powers from the Panel sends a message that it is being weakened; furthermore, confirmation hearings in particular have (despite having had mixed outcomes and results) been seen as an opportunity for Panels to raise their profile with the public and with PCCs.

4 Scrutiny of commissioners by police and crime panels

79. The Government proposed police and crime panels at a late stage in the passage of the Police Reform and Social Responsibility Bill to assuage concern that, once elected, commissioners would not be subject to sufficient scrutiny for their actions and decisions. The Government's expectation was for panels to provide 'light-touch' scrutiny, and funded them accordingly.¹³⁷ In previous chapters we examined the part played by panels in the appointment of deputy and assistant commissioners, and in respect of the removal or suspension of chief constables. In this Chapter we consider how they have approached their scrutiny functions more generally, and where there may be scope to strengthen their role.

The developing role of panels

80. The 2011 Act and the Policing Protocol Order 2011 gave police and crime panels a range of powers, including to:

- Scrutinise all decisions or actions by the commissioner;
 - Require the commissioner to provide information and answer questions;
 - Make reports and recommendations on the police and crime plan and annual report, of which the commissioner must take account and respond;
 - Hold public meetings to discuss the annual report and to question the commissioner on its contents;
 - Carry out confirmation hearings when a commissioner proposes to appoint a deputy, a chief executive, or chief finance officer;
 - Work to resolve non-criminal complaints made about the commissioner;
 - Ask HMIC for a professional view when the commissioner intends to dismiss a chief constable;
 - Suspend the commissioner if they are charged with an imprisonable offence which carries a maximum term of two years or more;
 - Appoint an acting commissioner if the elected one cannot carry out their role, for example, for health reasons or following resignation or disqualification;
 - Veto the commissioner's first precept proposal, and recommend that it be increased or decreased (although they cannot veto the revised proposal); and
- "PCC0007 (Local Government Association), para 7
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- Veto the commissioner's proposed candidate for chief constable (although they cannot veto the reserve candidate).

81. The composition of panels depends on the number of local authorities within the force area. Where a force area has ten or fewer local authorities, the panel should have ten members plus at least two independent co-opted members. Where a force area has more than ten local authorities, the number of members corresponds to the number of local authorities in the force area plus at least two independent co-opted members. Panels may co-opt additional members as long as the total number does not exceed 20 and the Secretary of State approves the co-options. Overall, the composition of panels is meant to reflect the political and geographical balance of councillors within the force area. Inevitably, this means that often the majority of members on the panel will have the same party affiliation as the commissioner, where they are not an independent. Furthermore, CoPaCC told us that in 26 areas the panel chair had the same party affiliation as the commissioner, and that this could result in the panel providing less challenging scrutiny.¹³⁸

82. Although the Local Government Association has provided some guidance for the nascent work of panels, and we also note the work of CoPaCC in this regard, the Police Foundation noted that there are no real national standards as to how panels should perform their role. As a result, there has been variation in the way working practices have developed between different areas.¹³⁹ The Centre for Public Scrutiny recently published a report, which sought to capture some of the experience of panels to date.¹⁴⁰ The staff who

support panels split their experience into two phases—an initial steep learning curve, followed by period of more proactive work by panels.

83. In the first phase, the work of panels has largely involved their focusing on statutory duties, such as confirmation hearings, scrutinising police and crime plans, and agreeing precept proposals. As with commissioners, this has involved panels developing an understanding of their statutory duties, which has at times resulted in disagreements between the two parties. Several PCCs voiced concerns that their respective panels had struggled to understand their role, and had at times over-reached their powers.¹⁴¹ The Thames Valley PCC told us his panel had at times appeared to be scrutinising the performance of the police force and the chief constable, rather than the commissioner.¹⁴² The Lincolnshire PCC also told us the panel's work had focused too much on operational policing, rather than on the decisions he had taken.¹⁴³ In fairness to police and crime panels, the Centre for Public Scrutiny told us it was not always easy to separate operational and strategic matters, and that often to have an understanding of the latter, it required information on the former.¹⁴⁴ Another concern among PCCs was that in discussions over

¹³⁸ Q 372 (CoPaCC)

¹³⁹ PCC0033 (Police Foundation), para 11

¹⁴⁰ Centre for Public Scrutiny, *Police and Crime Panels: the first year*, February 2014

¹⁴¹ Qq 51 (Police and Crime Commissioner for Warwickshire) and 657 (Police and Crime Commissioner for Kent)

¹⁴² PCC0018 (Police and Crime Commissioner for Thames Valley), para 11

¹⁴³ PCC0031 (Police and Crime Commissioner for Lincolnshire), para 3.1

¹⁴⁴ PCC0043 (Centre for Public Scrutiny), para 24

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setting the precept some local councillors were not able to separate their constituency concerns from their role in scrutinising the precept for the whole police force area.¹⁴⁵

84. The Centre for Public Scrutiny believed that part of the problem was that many police and crime panels had members who had previously sat on the former police authorities, and therefore did not appreciate how their role had changed since November 2012.¹⁴⁶ The Centre, the Local Government Association and others called for the Home Office to provide greater clarity on the respective role of panels, commissioners, and their offices, including on the extent of panels' powers and how and when they should be applied.¹⁴⁷

85. The second phase in the development of the work of police and crime panels has seen many conducting more proactive work in a way that is not prescribed in the legislation, but which has nevertheless helped them to fulfil their statutory functions. For example, the Dorset and West Yorkshire panels have developed a 'rapporteur' approach, whereby individual panel members take responsibility for particular subject policy areas, so gaining specialist knowledge that better enables them to scrutinise the commissioner.¹⁴⁸ In Cleveland and Sussex the panels have established sub-groups to consider in more detail the precept and budget in order to better prepare for the annual precept -setting process. Other panels are using themed meetings to focus in-depth on a particular priority of the commissioner.

86. Overall, a number of witnesses sought to characterise the relationship between commissioners and their panels. The Surrey PCC said he had been subject to "robust and open scrutiny".¹⁴⁹ The West Mercia Police and Crime Panel described the relationship as "positive, with a balance being struck between scrutiny and support".¹⁵⁰ The Sussex PCC told us: "The greatest benefit that panels can bring a police and crime commissioner is as a critical friend".¹⁵¹ At the conclusion of our inquiry, the Minister told us "they are developing a rhythm of being quite a good scrutiny mechanism [...] and I hope and expect them to continue to do that".¹⁵²

87. Effective scrutiny by police and crime panels relies on creating a constructive working relationship with the commissioner in which the panel acts as a 'critical friend'. However, many panels have to date struggled to understand their powers and define their role. Indeed, one former member of a police and crime panel described it as "a crocodile with rubber teeth". In short, they need to conduct themselves less in the style of the former police authorities, and operate more in the mode of select committees. We recommend that the Home Office provide fuller guidance to panels on

¹⁴⁵ PCC0018 (Police and Crime Commissioner for Thames Valley), PCC0041 (Police and Crime Commissioner for Dorset) and PCC0045 (Police and Crime Commissioner for Northumbria)

¹⁴⁷ PCC0043 (Centre for Public Scrutiny), para 24
¹⁴⁸ (local Government Association), para 8, (North Wales Police and Crime Panel), para 2.2, .P:Q1.Q19.
 (James Berry), para 20, and ED:QIM1 (Centre for Public Scrutiny), para 26
¹⁴⁹ .PIXIL.Q32. (West Yorkshire Police and Crime Panel), para 1.2.4, and (Centre for Public Scrutiny)
¹⁴⁹ PCC0008 (Police and Crime Commissioner for Surrey), para 3.2
¹⁵⁰ PCC0021 (West Mercia Police and Crime Panel), para 6
¹⁵¹ Q 160 (Police and Crime Commissioner for Sussex)
¹⁵² Q 696 (Minister for Policing, Criminal Justice and Victims)
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their role and remit, and how it relates to commissioners. We also recommend that the Local Government Association consider further ways to develop the sharing of best practice between panels. The political balance on panels is also a concern to us, and so we recommend that, where possible in the future, if the chair of a police and crime panel is from the same party as the commissioner, then the panel should consider appointing a deputy chair who is not from that party.

Strengthening the role of panels

88. The police and crime panels that gave evidence to us suggested other ways in which their scrutiny powers could be enhanced. First, a number raised concern at the flow of information from commissioners to panels.¹⁵³ The sharing of information is crucial to effective scrutiny and maintaining a good relationship between both parties. The Surrey Police and Crime Panel cited an example where the commissioner had agreed to share the recommendations of a review of the county's neighbourhood policing model before a final decision was made. However, the recommendations of the review were subsequently implemented without the panel having had sight of them.¹⁵⁴ In general, the Local Government Association told us there had been a number of cases where panels had only been provided with the information after making repeated requests, and even then it had been incomplete.¹⁵⁵

89. One aspect of the difficulty some panels faced in getting information concerned decisions made by commissioners. PCCs are required to publish all decisions they make that are of significant public interest. However, panels are often not kept aware of what decisions the commissioner is planning to make. Indeed, in some cases announcements were made in the media before the panel had been informed.¹⁵⁶ Many felt that a requirement on commissioners to produce a forward plan of their key decisions would facilitate better scrutiny by the panel. Furthermore, witnesses felt that the lack of any definition of what constituted a decision led to a range of interpretations being applied.¹⁵⁷ Indeed, analysis carried out by CoPaCC showed that during their first 48 weeks in office, one commissioner made just 11 decisions, which they deemed to be of significant public interest, whereas another made 141-almost three per week.¹⁵⁸ Whilst variation in the number of decisions will in part be a consequence of different approaches taken by PCCs, it also suggests that some commissioners may be using a narrow definition of what constitutes a decision in order to avoid scrutiny by the police and crime panel.

90. A second issue raised by panels was in respect of scrutiny of the commissioner's precept proposals. This is an important aspect of the annual work cycle for panels, though the

¹⁵³ PCC0007 (local Government Association), para 19, PCC0019 (Surrey Police and Crime Panel), para 2.2, (Welsh local Government Association), para 14, PCC0024 (Hampshire Police and Crime Panel), and (Centre for Public Scrutiny), para 21

¹⁵⁴ PCC0019 (Surrey Police and Crime Panel), para 2.2

¹⁵⁵ _pg:QQQ1 (local Government Association), para 20

¹⁵⁶ PCC0007 (local Government Association), para 21, and (Welsh local Government Association), para 14

¹⁵⁷ PCC0043 (Centre for Public Scrutiny), para 26; Q 504 (Chair of the Surrey Police and Crime Panel)

¹⁵⁸ CoPaCC, *PCC Statutory Transparency*, November 2013

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experience to date for many has seen the process truncated into so short a timeframe as to preclude the possibility of very meaningful scrutiny by the panel. For example, the Surrey Police and Crime Panel told us its members had only five working days to consider the commissioner's proposals, convene a meeting, and draft a formal response.¹⁵⁹ However, the Dyfed-Powys PCC noted that the scope to provide more time for scrutiny was constrained by the timing of Autumn Statement and the announcement of the Policing Settlement in December.¹⁶⁰

91. Finally, some panels raised concern over their role in investigating non-criminal complaints against the PCC.¹⁶¹ Dealing with complaints took up a large amount of panels'

time and resources, and whilst panels are able to carry out investigations, they have no real powers to take action in response. The Cumbria panel noted that the current process risked creating false expectations on the part of complainants.¹⁶² The North Wales panel told us that a lack of experience in dealing with complaints had "led to a tentative and some-what proliferated approach to their categorisation".¹⁶³ However, other than conveying a sense of frustration at the complaints process, those panels which gave evidence were not able to provide concrete recommendations on how their role could be improved.

92. The Government's intention was for commissioners to be held to account by the public with police and crime panels providing 'light touch' scrutiny. But the low turnout for the PCC elections and, the lack of a formal 'Opposition' between elections, inevitably places a greater emphasis on the role of panels in scrutinising commissioners.

93. To allow panels to conduct more proactive scrutiny, we recommend that the Home Office brings forward proposals to amend the Elected Local Policing Bodies (Specified Information) Order 2011 to require commissioners to publish a forward plan of key decisions, where these are known in advance, and to publish background information on each decision when it is made. The Home Office should also produce accompanying guidance for commissioners on what constitutes a decision. We further recommend that the Local Government Association and the Association of PCCs agree a protocol on the timely provision of information to panels generally, but with particular reference to the precept-setting process, to enable more effective scrutiny by panels. In this area, we also recommend that the Government does not again delay confirmation of police funding to such a late stage as last year, with the Autumn Statement not taking place until December. Finally, we recommend that the Local Government Association undertake in-depth research on panels' experience to date on complaint handling, so that it can make recommendations to the Home Office on how the process should be improved.

¹⁵⁹ Q 19 (Surrey Police and Crime Panel), para 4.1

¹⁶⁰ PCC0009 (Police and Crime Commissioner for Dyfed-Powys) para 3.2

¹⁶¹ fIXQ:U1 (Cumbria Police and Crime Panel), ^ (Hampshire Police and Crime Panel), para 3.5, ^ (North Wales Police and Crime Panel), para 2.7, and PCC0032 (West Yorkshire Police and Crime Panel), para 2.2.5

¹⁶² /bid.

¹⁶³ PCC0025 (North Wales Police and Crime Panel), para 2.7

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Panel resources

94. In 2013-14 the Home Office provided funding of £53,000 for the secretariat support for each police and crime panel. It is understood that the figure was calculated on an expectation that panels would require a single full-time scrutiny officer, and that they would meet only four times a year. During the first 18 months commissioners have been in office it has become apparent that the current funding does not reflect the workload of panels, most of which have met at least seven times a year, with one panel meeting monthly.¹⁶⁴ The Chair of the Surrey panel told us she had attended 23 meetings in the previous year, taking into account full panel sessions, sub-groups, briefing meetings, etc.¹⁶⁵ Many panels have been informally subsidised by the host authority through, for example, the provision of legal, finance, HR, policy and administrative support. The Local Government Association told us future funding from the Home Office had not been confirmed.¹⁶⁶

95. If police and crime panels are to play a stronger role in proactively scrutinising commissioners they need to be resourced accordingly in a way that is sustainable. We recommend the Home Office and Local Government Association undertake research to estimate the actual cost of support for panels to date to determine a more realistic level of funding. We further recommend that to provide long-term certainty, in the future, such funding should come from the police precept.

¹⁶⁴ PCC0007 (Local Government Association), para 10, lliQQ21 (Welsh Local Government Association), para 11, PCC0025 (North Wales Police and Crime Panel), para 2.4, PCC0043 (Centre for Public Scrutiny), para 28, .P.CQIIMZ (Frank A Chapman), para 7; Q 372 (CoPaCC)

¹⁶⁵ Q 495 (Chair of the Surrey Police and Crime Panel)

¹⁶⁶ PCC0007 (Local Government Association), para 28

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crime panel in such instances to bring it in line with the process for the removal of a chief constable. (Paragraph 77)

19. We have recommended earlier in this Report the need for a period of training for new commissioners before they take office. We believe that instruction in respect of their duties under the 2011 Act, the Police (Conduct) Regulations 2012, and other relevant employment law would form a useful aspect of that training period. Finally, we recommend the Home Office, HMIC, CPOSA, and the Association of PCCs work together to develop a third party mediation process that commissioners and chief constables can refer to when their relationship breaks down. Training on this process should also be included in the induction period for new commissioners. (Paragraph 78)

The developing role of police and crime panels

20. Effective scrutiny by police and crime panels relies on creating a constructive working relationship with the commissioner in which the panel acts as a 'critical friend'. However, many panels have to date struggled to understand their powers and define their role. Indeed, one former member of a police and crime panel described it as "a crocodile with rubber teeth". In short, they need to conduct themselves less in the style of the former police authorities, and operate more in the mode of select committees. We recommend that the Home Office provide fuller guidance to panels on their role and remit, and how it relates to commissioners. We also recommend that the Local Government Association consider further ways to develop the sharing of best practice between panels. The political balance on panels is also a concern to us, and so we recommend that, where possible in the future, if the chair of a police and crime panel is from the same party as the commissioner, then the panel should consider appointing a deputy chair who is not from that party. (Paragraph 87)

Strengthening the role of panels

21. The Government's intention was for commissioners to be held to account by the public with police and crime panels providing 'light touch' scrutiny. But the low turn-out for the PCC elections and, the lack of a formal 'Opposition' between elections, inevitably places a greater emphasis on the role of panels in scrutinising commissioners. (Paragraph 92)

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23. If police and crime panels are to play a stronger role in proactively scrutinising commissioners they need to be resourced accordingly in a way that is sustainable. We recommend the Home Office and Local Government Association undertake research to estimate the actual cost of support for panels to date to determine a more realistic level of funding. We further recommend that to provide long-term certainty, in the future, such funding should come from the police precept. (Paragraph 95)