

AGENDA ITEM

REPORT TO COUNCIL

18 JANUARY 2012

**REPORT OF CORPORATE
MANAGEMENT TEAM**

POLICE & CRIME COMMISSIONERS AND POLICE AND CRIME PANELS

SUMMARY

This report will be considered by Cabinet at its meeting to be held on 12 January 2012. The relevant minute coming from Cabinet's consideration of the report will be forwarded to Members ahead of Council.

This report outlines the position in respect of Police & Crime Commissioners and Police and Crime Panels as a result of the new Police Reform and Social Responsibility Act 2011.

RECOMMENDATIONS

That Council agree:

1. that the report be noted.
2. that the proposed composition of the Cleveland Police & Crime Panel, i.e. two Councillors from Hartlepool, three from Middlesbrough and Redcar & Cleveland, and four from Stockton-on-Tees, be approved.
3. that the proposal for Stockton to act as lead authority in respect of the Panel be approved.
4. that the Cleveland Police & Crime Panel will have reciprocal observer arrangements with the Durham & Darlington Police & Crime Panel.
5. to receive a further report detailing the rules of procedure and financial arrangements for the Panel.

DETAIL

1. The Police Reform & Social Responsibility Act received Royal Assent on 15 September 2011. It provides for the election of a Police & Crime Commissioner (PCC) for all provincial Police forces in England & Wales, and for the establishment of a Police & Crime Panel (PCP) to scrutinise the functions of the Commissioner.
2. The first PCCs will now be elected on 15 November 2012 (not in May 2012, as originally proposed) and the previous proposal for a term limit of two terms has been removed. The first term will run to May 2016, and terms will be for four years each thereafter. The PCC will be the recipient of all funding, including the government grant and precept, related to policing and crime reduction. How this money is allocated is a matter for the PCC (except in relation to a small number of specific grants) and the Chief Constable may provide professional advice and recommendations

3. The PCCs will have the legal power and duty to:

- (a) set the strategic direction and objectives of the force through the 5 year Police and Crime Plan, which must have regard to the Strategic Policing Requirement set by the Home Secretary;
- (b) monitor the overall performance of the force including against the priorities agreed within the Police and Crime Plan;
- (c) decide the budget, setting a precept, allocating assets and funds to the Chief Constable;
- (d) appoint, and where necessary, remove the Chief Constable;
- (e) maintain an efficient and effective police force for the police area;
- (f) provide the local link between the police and the public, working to translate the legitimate desires and aspirations of the public into action on the part of the Chief Constable to cut crime and antisocial behaviour;
- (g) hold the Chief Constable to account for the exercise of the functions of the office of Chief Constable and the functions of the persons under the direction and control of the Chief Constable;
- (h) not fetter the operational independence of the police force and the Chief Constable that leads it;
- (i) publish information specified by the Secretary of State and information that the PCC considers necessary to enable the people who live in the force area to assess the performance of the PCC and the Chief Constable;
- (j) comply with all formal requests from the Police and Crime Panel to attend their meetings;
- (k) prepare and issue an annual report to the Police and Crime Panel on the PCC's delivery against the objectives set within the Plan;
- (l) keep abreast of all complaints made against senior officers and staff, whilst solely acting to determine how best to manage complaints against the Chief Constable.

4.1 A PCC will have wider responsibilities than those relating solely to the police force, namely:

- (a) a wider responsibility for the delivery of community safety and the ability to bring together Community Safety Partnerships at the force level;
- (b) the ability to make crime and disorder reduction grants within their force area;
- (c) the ability to enter into collaboration agreements between other PCCs and forces that benefit their force area and deliver better value for money and enhanced policing capabilities;
- (d) a wider responsibility for the enhancement of the delivery of criminal justice in their area.
- (e) the power currently invested in the Home Secretary, to give formal approval to mergers of Community Safety Partnerships (CSPs), but only when requested by the CSPs concerned, and signed off by all the 'responsible authorities' on each CSP involved (i.e. Police, Council, Fire Authority, PCT and Probation Trust)

4.2 The qualifications for serving as PCC include the following:

- (a) age 18 at the time of nomination
- (b) on the electoral register in the police area when nominated and on the day of election
- (c) must not be nominated for election as PCC in any other police area
- (d) must not be a serving police officer (including British Transport Police, Civil Nuclear Constabulary and Special Constables) or a member of police staff or a member or an employee of various other bodies including the Independent Police Complaints Commission
- (e) must not be subject to various debt relief or bankruptcy restrictions orders

- (f) must not have been convicted of any imprisonable offence in the UK, Channel Islands or Isle of Man (whether or not sentenced to imprisonment), or debarred from the House of Commons for corrupt or illegal practices
- (g) must not be a member of staff of any council which lies within the police area, in whole or in part, including parish and community councils
- (h) must not be an MP, MEP etc
- (i) must satisfy citizenship requirements.

PCCs and CSPs will also have reciprocal duties to co-operate with each other.

5. The Chief Constable is responsible to the public and accountable to the PCC for:

- (a) leading the force in a way that is consistent with the attestation made by all constables on appointment and ensuring that it acts with impartiality;
- (b) appointing the force's Senior Officers and Staff after consultation with the PCC;
- (c) supporting the PCC in the delivery of the strategy and objectives set out in the Plan;
- (d) assisting the PCC in planning the force's budget;
- (e) having regard to the Strategic Policing Requirement when exercising their policing activity in respect of their force's national and international policing responsibilities;
- (f) being the operational voice of policing in the force area and regularly explaining to the public the operational actions of officers and staff under their command;
- (g) entering into collaboration agreements between other Chief Constables and forces that benefit their force area and deliver better value for money and enhanced policing capabilities with the consent of their PCC;
- (h) remaining politically independent of the Office of Police and Crime Commissioner;
- (i) managing all complaints against the force, its officers and staff, including those of ACPO (Association of Chief Police Officers) rank (Assistant Chief Constable and above), and ensuring that the PCC is kept abreast of developments of those complaints in a regular and timely fashion;
- (j) exercising the power of direction and control in such a way as is reasonable to enable their PCC to have access to all necessary information and staff within the force;
- (k) having day-to-day responsibility for financial management of the force within the framework of the agreed budget allocation and levels of authorisation issued by the PCC.

6.1 The Act requires the establishment of a Police & Crime Panel of at least 12 and maximum of 20, but funding is only available for 12. At least 10 will be councillors and the rest co-optees, with a minimum of two co-opted members. It is intended that these be in place prior to the November 2012 elections. Elected Mayors will automatically take one of the places for their authority (unless also elected as PCC).

6.2 The Police and Crime Panel provides a check and balance against the performance of the PCC. The Police and Crime Panel does not scrutinise the Chief Constable – it scrutinises the PCC's exercise of his or her statutory functions. This includes:

- (a) the power of veto, over the PCC's proposed budget;
- (b) the power of veto, over the PCC's proposed candidate for Chief Constable;
- (c) the power to review the draft Plan and make recommendations to the PCC who must have regard to them;
- (d) the power to review the PCC's Annual Report and make reports and recommendations at a public meeting, which the PCC must attend;
- (e) the power to require any papers in the PCC's possession (except those which are operationally sensitive);
- (f) the power to require the PCC to attend the Police and Crime Panel to answer questions;
- (g) the power to appoint an acting PCC where the elected PCC is incapacitated, resigns or is disqualified; and

(h) responsibility for all complaints about a PCC, although serious issues must be passed to the IPCC (Independent Police Complaints Commission).

6.3 The Chief Constable retains responsibility for operational matters. If the Police and Crime Panel seek to scrutinise the PCC on an operational matter, the Chief Constable or other officers may need to attend alongside the PCC to offer factual accounts and clarity if needed for the actions and decisions of their officers and staff. The accountability of the Chief Constable is to the PCC and not to the Police and Crime Panel.

7. The establishment of PCCs is intended to allow the Home Office to withdraw from day-to-day policing matters, and allowing local communities to hold the police to account.

Nevertheless, the Home Secretary retains powers to direct PCCs and Chief Constables to take action if they are failing to carry out their functions, in defined and extreme circumstances. Such powers will be used as a last resort by the Home Secretary, including where omitting to do so would result in either force area or national security failing.

8.1 The current arrangements are defined in part by the Police Reform and Social Responsibility Act 2011 which preserves the statutory reference contained in the Police Act of 1996 and 1964, to forces being under the direction and control of the Chief Constable.

8.2 Section 2 of the 2011 Act provides that 'a police force, and the civilian staff of a police force, are under the direction and control of the Chief Constable of the force'.

The direction and control of a Chief Constable will include:

- (a) A decision whether, or whether not, to deploy police officers;
- (b) absolute discretion to investigate crimes and individuals as he or she sees fit;
- (c) the decision to make an arrest (subject to the arresting officer being satisfied that the grounds for an arrest are made out);
- (d) a decision taken with the purpose of balancing competing operational needs within the framework of priorities and objectives set by the Police and Crime Commissioner;
- (e) a tactical operational decision to reallocate resource to meet immediate demand; and
- (f) the allocation of officers' specific duties and responsibilities within the force area to meet the objectives set by the Police and Crime Commissioner;

8.3 The PCC will hold the Chief Constable to account for the totality of policing within their force area, including the operational delivery of the police service.

8.4 The PCC and Chief Constable must work together to safeguard the principle of operational independence, while ensuring that the PCC is not fettered in fulfilling the role set out above. The concept of operational independence is not defined in statute, and as HMIC (Her Majesty's Inspectorate of Constabulary) has stated, by its nature, is fluid and context driven.

8.5 The relationship between the PCC and Chief Constable is defined by the PCC's democratic mandate to hold the Chief Constable to account, and by the law itself: primary legislation and common law already provide clarity on the legal principles that underpin operational independence and the Office of Constable.

8.6 In order to respond to the strategic objectives set by the PCC and the wide variety of challenges faced by the police every day, the Chief Constable is charged with the direction and control of the Force and day-to-day management of the PCC's force assets.

8.7 The operational independence of the police is a fundamental principle of British policing. It is expected by the Home Secretary that the professional discretion of the Police Service and oath of Office give surety to the public that this shall not be compromised.

9. It is proposed that the initial composition of the Cleveland Police & Crime Panel be as follows:-
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|--|-------------------------|
| (a) Hartlepool Borough Council | – two Elected Members |
| (b) Middlesbrough Borough Council | – three Elected Members |
| (c) Redcar & Cleveland Borough Council | – three Elected Members |
| (d) Stockton-on-Tees Borough Council | - four Elected Members |
| Total | 12 Elected Members |

Ten of the Elected Members will be direct nominees of individual Local Authorities and the remaining two will need to be co-opted by the original ten. The core members of the Panel will also be responsible for co-opting independent members (a minimum of two and a maximum of eight). Secretary of State approval would be required for more than two co-optees i.e. the two 'extra' Elected Members plus the two 'independents'. It is proposed that all twelve Elected Members should have equal voting rights, including the opportunity to elect or be elected as Chair or Vice Chair, and serve the same term of office. It is a requirement of the legislation that the 12 Elected Members should represent the political composition of the four Local Authorities.

One possible solution, based on current numbers, is set out at **Appendix A**

10. It is also proposed that Stockton-on-Tees Borough Council will act as lead authority for the Cleveland Police & Crime Panel.
11. Finally, it is proposed that the Cleveland Police & Crime Panel and the Durham & Darlington Police & Crime Panel extend reciprocal observer arrangements, i.e. one or more members of each panel will be invited to sit as an observer at the meetings of the other Panel.
12. The proposals set out at paragraphs 9 to 11 above were discussed and supported at a meeting of the Tees Valley Chief Executives Group on 17 August 2011.
- 13.1 Current police authorities will oversee effective transition to the Office of the Police and Crime Commissioner and creation of Police and Crime Panels. They will therefore need to:
- (a) plan and deliver an effective transition programme whilst recognising that the effective delivery of police authority and force business continues to remain paramount.
 - (b) be mindful of the continuing ongoing challenges facing police authorities and the police service, particularly the current difficult financial context, to continue secure value for money and financial efficiencies.
- 13.2 The Home Office has established a Police and Crime Commissioners Transition Programme Sponsorship Board, chaired by the Minister for Policing and Criminal Justice, Nick Herbert MP. Board membership consists of key policing bodies: the Association of Police Authorities; Association of Chief Police Officers (ACPO); Association of Police Authority Chief Executives (APACE); Association of Police Authority Treasurers (PATs) and the Local Government Association (LGA).
- 13.3 A number of projects are ongoing and the Board will work with the Government to facilitate effective transition from Police Authorities to PCCs. Work in progress includes:
- (a) The Strategic Policing Requirement which will bridge the local policing agenda with regional and national policing needs.
 - (b) A Protocol setting out parameters within which the PCC and Chief Constable will deliver and govern.
 - (c) A policy on complaints against PCCs.
 - (d) A Financial Management Code of Practice which PCCs must comply with; and
 - (e) Agreement of transfer schemes setting out how assets, staff and liabilities will transfer to new arrangements.

FINANCIAL IMPLICATIONS

14. The PCC is ultimately accountable to the public for the management of the Police Fund. The PCC and Chief Constable share a responsibility to provide effective management of the policing budget and to secure value for money on behalf of the public that they both serve.
15. The Chief Constable has day-to-day responsibility for managing allocated budgets after they have been approved by the PCC, consistent with the objectives set by the PCC.
16. The PCC advised by the Chief Finance Officer must be satisfied that the Chief Constable exercises financial responsibilities in a proper and effective manner.
17. When significant changes of policy that have a financial implication are envisaged, the PCC should consult the Chief Constable and seek their professional advice as to how such changes could be effectively implemented. When the Chief Constable intends to spend significant sums of their budget the approval of the PCC should be sought.
18. The PCC will become the recipient of Home Office funding allocations, including the Community Safety Fund (currently allocated to Local Authorities as accountable bodies for CSPs) and the Home Office grant for the Drugs Intervention Programme (DIP) funding, currently directed to Local Authorities as accountable bodies for CSPs, and constituting 36% of the DIP Grant in intensive DIP areas (not Redcar & Cleveland).
19. In respect of the Panel, there will be a Government grant of £30,000 per year plus £920 per member of the Panel, payable to the lead authority.

LEGAL IMPLICATIONS

20. The proposals set out at the beginning of the report are intended to discharge the Council's new responsibilities.

RISK ASSESSMENT

21. These arrangements are categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

22. These new arrangements will radically alter the landscape for delivery of the community safety agenda, which links into other policy priorities including economic regeneration, life chances for children and young people, healthy communities, housing, stronger communities etc. Discussions are taking place between lead officers for community safety across the four Cleveland Boroughs with a view to ensuring an orderly transition to the new arrangement.

EQUALITIES IMPACT ASSESSMENT

23. This report is not subject to an Equality Impact Assessment because the matters at the discretion of the Council do not have a significant impact on equalities issues.

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Education related? No

Background Papers Report to Tees Valley Chief Executives Group 17 August 2011
Informal Briefing paper, provided by Middlesbrough Borough Council August
2011

Ward(s) and Ward Councillors: All

Property No new implications