

Protocol

Introduction

The election of Police and Crime Commissioners is at the heart of the Government's plan to cut crime. They will reconnect the public and the police, and allow us to replace bureaucratic accountability to Whitehall with democratic accountability to local communities. As a result the police will have greater freedom and discretion to fight crime as they see fit within a rebalanced and strengthened tripartite structure.

This protocol is framed by the provisions made for the reformed policing landscape that are held within the Police Reform and Social Responsibility Act 2011.

This Protocol does not supersede or vary the legal duties and requirements of the Office of Constable. The operational independence of the police service, and the decisions made by its operational leadership remain reserved to the Office of Chief Constable and that Office alone.

This protocol applies to every Police and Crime Commissioner (PCC) and Chief Constable within England and Wales. Their respective staff and the constables of each force are expected to have regard to the principles and spirit of this document.

This protocol is issued by the Home Secretary to set out to PCCs (including the Mayor of London), Chief Constables (including the Commissioner of Police of the Metropolis) and Police and Crime Panels (including the London Assembly) how their functions will be exercised in relation to each other. It is to be considered an enabling tool to foster an effective and constructive working relationship within the governance of the policing service. This is more likely to be achieved when there are relationships built on trust and confidence and where communication and clarity of understanding are at their highest.

All parties will abide by the principles of public life set out by the Nolan Committee and the core principles of The Good Governance Standard for Public Services.

Legislative Framework

The Police Reform and Social Responsibility Act 2011 (the Act) establishes PCCs within each force area and charges them with responsibility for the totality of policing within that area. The Act requires a PCC to hold the force area Chief Constable to account on behalf of the public which both the PCC and the Chief Constable serve.

Both the PCC and the Chief Constable are established in law as corporations sole within the Act. The Chief Constables are charged with the employment and impartial direction and control of all constables and staff within the police

force that they lead. The Act does not impinge on the legal authority and statutory foundation for the Office of Constable to maintain the Queen's Peace without fear or favour. The will of Parliament and Government is that the Office of Constable shall not be open to political interference.

The public accountability for the delivery and performance of the police service is placed into the hands of the force area electorate and their directly elected PCC. The PCC draws on their mandate to set and shape the strategic objectives of their force area in consultation with the Chief Constable. The PCC of each force area is accountable to the electorate; the Chief Constable is accountable to the PCC. The Police and Crime Panel within each force area is empowered to maintain a regular check and balance on the performance of the PCC.

The Police and Crime Commissioner

The PCC has a mandate to hold the police to account on behalf of the public.

The PCC is 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 such as those for counter-terrorism, in consultation with the Chief Constable, who may provide professional advice and recommendations.

The PCC has the legal power and duty to:

- set the strategic direction and objectives of the force through the Police and Crime Plan (the Plan), which must have regard to the Strategic Policing Requirement set by the Home Secretary;
- monitor the overall performance of the force including against the priorities agreed within the Police and Crime Plan;
- hold the Chief Constable to account for the performance of the force's officers and staff,
- decide the budget, allocating assets and funds to the Chief Constable;
- appoint, and where necessary, remove the Chief Constable;
- maintain an efficient and effective police force for the police area.
- 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.
- 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
- not fetter the operational independence of the police force and the Chief Constable that leads it;
- 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 Chief Constable.

DRAFT

- comply with all formal requests from the Police and Crime Panel to attend their meetings;
- prepare and issue an annual report to the Police and Crime Panel on the PCC's delivery against the objectives set within the Plan;
- 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.

In order to enable the PCC to exercise the functions of office effectively, the PCC may need access to information and officers and staff within their force area. Such access to any information must not be unreasonably withheld by the Chief Constable, neither should the request fetter their direction and control of the force.

A PCC has wider responsibilities than those relating solely to the police force, namely:

- a wider responsibility for the delivery of community safety and the ability to bring together Community Safety Partnerships at the force level;
- the ability to make crime and disorder reduction grants within their force area;
- 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;
- a wider responsibility for the enhancement of the delivery of criminal justice in their area;

The Chief Constable

The Chief Constable is responsible for maintaining the Queen's Peace, and has direction and control over the force's officers and staff. The Chief Constable holds office under the Crown, but is appointed by the PCC. The Chief Constable is accountable to the law and the PCC for the delivery of policing in the police area but remains free to exercise the powers and duties of a constable without fear or favour.

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

- 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;
- appointing the force's Senior Officers and Staff after consultation with the PCC;
- supporting the PCC in the delivery of the strategy and objectives set out in the Plan;
- assisting the PCC in planning the force's budget

DRAFT

- having regard to the Strategic Policing Requirement when exercising their policing activity in respect of their force's national and international policing responsibilities;
- notifying and briefing the PCC of any matter or investigation which the PCC may need to provide public assurance in company with the Chief Constable (PCCs will be designated as Crown Servants under the Official Secrets Act, making them subject to the same duties in relation to sensitive material as Government Ministers);
- 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;
- 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;
- remaining politically independent of the Office of Police and Crime Commissioner;
- managing all complaints against the force, its officers and staff, including those of ACPO rank, and ensuring that the PCC is kept abreast of developments of those complaints in a regular and timely fashion;
- 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;
- 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.

The Police and Crime Panel

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 statutory functions. This includes:

- The power of veto, by $\frac{3}{4}$ majority, over the PCC's proposed budget;
- The power of veto, by $\frac{3}{4}$ majority, over the PCC's proposed candidate for Chief Constable;
- The power to ask HMIC for a professional view when the PCC intends to dismiss a Chief Constable;
- The power to review the draft Plan and make recommendations to the PCC who must have regard to them;
- The power to review the PCC's Annual Report and make reports and recommendations at a public meeting, which the PCC must attend;
- The power to require any papers in the PCC's possession (except those which are operationally sensitive);
- The power to require the PCC to attend the Police and Crime Panel to answer questions

DRAFT

- The power to appoint an acting PCC where the elected PCC is incapacitated, resigns or is disqualified; and
- Responsibility for all complaints about a PCC, although serious issues must be passed to the IPCC.

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 the their officers and staff. The accountability of the Chief Constable remains firmly to the PCC and not to the Police and Crime Panel.

The Home Secretary

The establishment of PCCs will allow the Home Office to withdraw from day-to-day policing matters, giving the police greater freedom to fight crime as they see fit, 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.

Operational Matters

The current arrangements are defined in part by the Police Reform and Social Responsibility Bill 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.

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 decision whether, or whether not, to deploy police officers;
- Absolute discretion to investigate crimes and individuals as he or she sees fit;
- The decision to make an arrest (subject to the arresting officer being satisfied that the grounds for an arrest are made out);
- 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;
- A tactical operational decision to reallocate resource to meet immediate demand; and
- The allocation of officers' specific duties and responsibilities within the force area to meet the objectives set by the Police and Crime Commissioner.

DRAFT

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.

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 has stated, by its nature, is fluid and context driven.

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.

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.

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.

Financial Responsibilities

Each party has a shared responsibility to ensure that the police service and all forces establish effective financial and budget planning for the short, medium and longer term.

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.

The Chief Constable has day to day responsibility for managing their allocated budgets after they have been approved by the PCC, so long as they are consistent with the objectives set by the PCC.

Standing orders relating to contracts and financial regulations will be drawn up jointly by the PCC's Chief Financial Officer in conjunction with their counterpart on the Chief Constable's staff. These standing orders shall be approved by the PCC. The PCC, advised by their Chief Finance Officer, must be satisfied that the Chief Constable exercises delegated financial responsibilities in a proper and effective manner. PCCs must comply with Home Office requirements for national procurement.

The Financial Regulations should:

DRAFT

- a) Ensure that the financial dealings of the PCC and of the force are conducted properly and in a way which meets the requirements of best practice.
- b) Include sufficient safeguards for the PCC's Chief Finance Officer who is responsible for ensuring that the financial affairs are properly administered, to discharge properly his or her statutory obligations.
- c) Allocate financial responsibility consistent with a) and b) to the police force.

The PCC advised by the Chief Finance Officer must be satisfied that the Chief Constable exercises financial responsibilities in a proper and effective manner.

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.

Resolving differences

The PCC is a publicly accountable individual who will need to establish an effective working relationship with their Chief Constable in order to deliver policing within England and Wales. Where differences occur they should be resolved where possible locally between the PCC and Chief Constable. Professional advice may be offered by Her Majesty's Inspectorate of Constabulary.

Review

This Protocol will be subject to review during the first term of the Police and Crime Commissioners. This Protocol is issued by order of the Home Secretary.