

Briefing for Police and Crime Commissioner

Topic: Policing Protocol

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Purpose of briefing

To appraise the new Commissioner of the Policing Protocol Order 2011, which sets out the relationship between PCCs, Chief Constables, Police & Crime Panels and the Home Secretary.

Background

The Policing Protocol applies to all PCCs and equivalents (except in some respects the City of London Police Authority), all Chief Constables (except the Commissioner of the City of London Police in some respects) and all Police and Crime Panels. The staff of all these organisations are expected to have regard to it. The Policing Protocol states that:

- the establishment and maintenance of effective working relationships by all parties is fundamental. The principles of goodwill, professionalism, openness and trust should underpin the relationship between all parties, who will do their utmost to make the relationship work.
- all parties should abide by the seven principles set out in Standards in Public Life: First Report of the Committee on Standards in Public Life (known as [the Nolan Principles](#)). The [Good Governance Guidance for the Public Sector](#) sets out how these principles apply in the public sector.
- the Police Reform and Social Responsibility Act (PRsRA) gives PCCs responsibility for the **totality of policing** within their force area (although this does not confer on PCCs the ability to give operational directions - see below). This the Act requires them to hold the force Chief Constable to account for the operational delivery of policing including in relation to the Strategic Policing Requirement (SPR) published by the Home Secretary. It makes the following general points:
 - The 2011 Act does not impinge on the common law legal authority of the office of constable, or the duty of constables to maintain the Queen's Peace without fear or favour.
 - Each PCC and their respective Chief Constable are established in law as corporations sole within the 2011 Act. In doing so both the PCC and the Chief Constable are enabled by law to employ staff and hold funds.
 - The public accountability for the delivery and performance of the police service is placed into the hands of the PCC on behalf of their electorate. The PCC draws on this mandate to set and shape the strategic objectives of their force area in consultation with the Chief Constable. They are accountable to the electorate; the Chief Constable is accountable to their PCC. The Panel within each force area is to support the PCC in their functions and maintain a regular check and balance on the performance of the PCC in that context.

Police and Crime Commissioners

The Protocol sets out the following points in relation to PCCs:

- The PCC within each force area has a statutory duty and electoral mandate to hold the police to account on behalf of the public.
- The PCC is the recipient of all funding, including the government grant, precept and other sources of income, related to policing and crime reduction and all funding for a force must

come via the PCC. How this money is allocated is a matter for the PCC in consultation with the Chief Constable, or in accordance with any grant terms.

- The PCC must not fetter the operational independence of the police force and the Chief Constable who leads it.
- In order to enable the PCC to exercise the functions of their office effectively, they will need access to information and officers and staff within their force area. Such access must not be unreasonably withheld or obstructed by the Chief Constable and/or fetter the Chief Constable's direction and control of the force.
- The Protocol provides a list of other legal powers and duties of the PCC.
- A PCC has wider responsibilities for than those relating solely to the police force, and the Protocol also provides a list of these responsibilities, e.g. community safety and criminal justice.

Chief Constables

The Protocol sets out the following main points in relation to Chief Constables:

- 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 except in London where the Commissioner and Deputy Commissioner are appointed by the Queen on the recommendation of the Home Secretary.
- The Chief Constable is accountable to the law for the exercise of police powers, and to the PCC for the delivery of efficient and effective policing, management of resources and expenditure by the police force. The Chief Constable, their constables and staff, are operationally independent.
- The Chief Constable is responsible to the public and accountable to the PCC for a range of other statutory duties which are listed in the document.

Police and Crime Panels

The Panel is required to support the PCC and provide a check and balance in relation to the performance of the PCC. The Panel does not scrutinise the Chief Constable – it scrutinises the PCC's exercise of their statutory functions. While the Panel has a role in challenging the PCC, it must also exercise its functions with a view to supporting the effective exercise of the PCC's functions. It has:

- A power of veto over the precept
- A power of veto over the appointment of a Chief Constable
- A power to hold confirmation hearings (but not veto) in relation to other senior PCC staff (Chief Executive, Chief Finance Officer and Deputy PCC)
- A power to appoint an acting Police and Crime Commissioner where the incumbent PCC is incapacitated, resigns or is disqualified
- Responsibility for complaints about a PCC, although criminal matters and serious complaints and conduct matters must be passed to the IOPC
- Responsibility to review and make recommendations on the PCC's Police and Crime Plan

If the Panel seek to scrutinise the PCC on an operational matter, the Chief Constable may be invited (but cannot be required) to attend alongside the PCC to offer factual accounts and clarity (if needed) of the Chief Constable's actions and decisions. The accountability of the Chief Constable remains firmly to the PCC and not to the Panel.

The Home Secretary

The Protocol states that the establishment of PCCs enabled the Home Office to withdraw from day-to-day policing matters, at the time the legislation was passed, giving the police greater freedom to fight crime as they see fit, and allowing local communities to hold the police to account. However, the current government has expressed a desire to 'lean in' more on policing – see briefing on the

national governance landscape. In any event, the Home Secretary retains a number of legal powers, which are set out in the protocol, including:

- The Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen's Peace within all force areas, safeguarding the public and protecting our national borders and security. The Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties, but such powers and tools will be used only as a last resort. They will not be used to interfere with the democratic will of the electorate within a force area, nor seek to interfere with the office of constable, unless the Home Secretary is satisfied on the advice of Her Majesty's Inspectorate of Constabulary that not to do so would result in a police force failing or national security being compromised.
- The Home Secretary retains the legal accountability for national security and the role that the police service plays within the delivery of any national response. The Home Secretary has a duty to issue a Strategic Policing Requirement that sets out what are, in her view, the national threats at the time and the appropriate national policing capabilities that are required to counter them.

Operational Matters

The Protocol also has a section that deals in some detail with operational independence, reinforcing that the operational independence of the police is a fundamental principle of British policing.

It states that the professional discretion of the police service and oath of office give surety to the public that operational independence will not be compromised, and that police officers and police staff are under the direction and control of the Chief Constable. It includes an illustrative list of what direction and control includes – for instance, the ability to issue a warrant to an attested officer, discretion to investigate crimes, and decisions taken to balance competing operational needs.

The Chief Constable is expected to ensure that their PCC is regularly informed of their decisions and operational activity in a timely manner so that the PCC can hold the Chief Constable to account for the totality of policing within their force area, including holding to account for the operational delivery of the police service.

Current Issues

As a result of the PCC Review, the Home Office may decide to revise the Protocol over the coming months.

Decisions Needed

None at present.

Partnership Involvement

Parties to the Policing Protocol are those listed above.

Police Involvement

As a party to the Protocol, the Chief Constable and Durham Constabulary is required to adhere to it.

People to Meet

Chief Executive

Chief Constable Jo Farrell

Chair and Vice Chair of Police & Crime Panel

Home Secretary

Policing Minister

