

APCC Response – Guidance for Police, Fire and Crime Panels

Introduction

The Association of Police and Crime Commissioners (APCC) is the national body that supports Police and Crime Commissioners (PCCs), and other local policing bodies across England and Wales, to provide national leadership and influence change in the policing and criminal justice landscape.

Please find below the APCC response to the consultation about the proposed HMICFRS Inspection programme for 2019-20. You will be aware that we agreed the APCC would collate members' views in response to this draft guidance, although it is possible that one or two may have contacted you direct.

This document sets out a summary of the key matters raised by our members in the individual responses sent or copied to us. Our response draws out common themes and key concerns/comments which our members have made.

General Comments

We welcome the opportunity to comment on this reiteration of the draft guidance and are pleased that references to panels holding PCCs to account have been removed, as this would not have been in line with the legislation. We understand that the key rationale for revising the guidance at this point is to provide Police and Crime Panels with information on the new role which some Panels have in relation to Police Fire and Crime Commissioners (that have taken on the governance of fire and rescue services). However, you will be aware that other potential changes are in the pipeline – particularly around police complaints. Although this change is noted at points in the guidance, it might be helpful to be clear this has not yet been implemented and that PCCs should not be held to account for those functions.

This section aims to comment on the key themes which have emerged from the responses that PCCs have sent to us. We deal with some specific points that a few of them have raised in the next section, but the common themes which have emerged are as follows:

- Wales – at present the guidance makes no reference to the different situation in Wales. For instance, fire is a function devolved to the Welsh Assembly, so PCCs are unable to take on this role. In addition the stakeholders list should include Welsh alternatives (e.g. Public Service Boards), and it should be stressed that the use of other Local Authority resources to support Panel activity is not permitted in Wales.
- Precept/Budgetary oversight – there have been a number of comments on various aspects of this section, as follows:
 - Page 8 deals in part with the Panels scrutiny of the PCC's budget. However, the legislative requirement is for the Panel to review the precept proposed by the PCC. A budget report will inevitably accompany the precept proposals to give background, but this section should be amended to reflect that it is the precept which is subject to the panels support and scrutiny and for which they are a statutory consultee, not the budget.

- In the Graphic at the end of this section (page 12) 9 February is quoted as the date by which the Panel should review the precept – this is incorrect and should be **8 February**.
- There is a consequential point at page 10, which includes a comment around “understanding budget material” (para 5). We do not think the work of the Panel is within the remit of the host authority’s Finance Officer.
- Respective role of PCC, Chief and Panel – It might be useful for the roles of a Police and Crime Commissioner, Chief Constable and Panel to be succinctly and simply presented in tabular form to enable comparison early in the document. The list of PCC functions could be updated (see section below) and the document could be supported by the role profile for panel members, which clearly articulates their strategic role in relation to the totality of policing in their force area, which would reduce the opportunity for panel members to discuss parochial issues.
- Panel’s relationship with Chief Constables – pages 23-24. Several points have been made here:
 - Our members suggest that the wording of the protocol on this subject is included here. As written, the section seems to suggest that the areas where Chief might be invited to give evidence extend beyond panel scrutiny role and could be interpreted as a way of using the Chief Constable as a means of challenging the PCC. Alternatively, it could encourage the panel to seek to scrutinise the Chief. It should be made clear it is for the PCC to decide whether the Chief is ‘needed’.
 - Whilst we appreciate that it is helpful to described what matters are ‘operational’, we still think this section is confusing and arguably misleading, particularly in relation to the wording of the elements about what evidence might be sought from the Chief, what matters should not be scrutinised, and what questions might or might not be asked by the panel. We wonder if including what the Panel should **not** do or **not** ask is helpful, or merely encourages inappropriate questions – or alternatively whether an appendix example of good and bad panel questions may be useful (as would other documents/checklists etc) – but this should be based on actual examples of good practice, to avoid the perception of potentially leading panels?
 - On a related point - Whilst operational independence is included within this document, the understanding of it does not cascade throughout the entirety of the document. For example:
 - on page 10 the question ‘Will the increase in the precept enable you to increase the number of frontline officers?’ It would be more appropriate for this to read ‘you and the Chief Constable to increase...’, but in any event the real issue is not about numbers, but about the capacity and capability of the force.
 - on page 13 the sentence ‘the plan is a high level, strategic document – not one that covers the detail of operational policing’, it would be useful to add in brackets (because that is not the remit of the PCC).
 - on page 15 the document makes reference to ‘supporting the PCC to hold the Chief Constable to account on operational delivery’. The wording might by unhelpful, because the statutory duty is for the PCC to hold the Chief Constable to

- account for the exercise of his/her functions (which would include, but is not limited to operational delivery).
- It might be more appropriate to seek some of this evidence on operational matters through liaison with OPCC and PCC and/or the formal arrangements in place for the PCC to hold the chief to account.
 - Confirmation process – pages 15-16. We have received a number of comments on this section. Broadly they have all expressed concerns that part of this section overstates the legislation. Although touched on in the text, it could be clearer that the Panel is not part of the appointment process, but merely holds a confirmation hearing, whose statutory functions are set out at Sch1 para 9 of the Act, which says that the Panel should have the following information:
 - a) the name of the person whom the commissioner is proposing to appoint (“the candidate”);
 - (b) the criteria used to assess the suitability of the candidate for the appointment;
 - (c) why the candidate satisfies those criteria; and
 - (d) the terms and conditions on which the candidate is to be appointed.Therefore, for instance, the candidate’s CV is not an appropriate document to share.
 - Fire Governance (largely pages 6, 7 and 9, but some other elements too) – Some of our members have made some specific points, which are set out in more detail in the section below, but it is worth noting here that several PCCs have commented that references in this section should be to Fire and Rescue Authorities or Services, Fire and Rescue Plans, etc (and specifically not to ‘corporate safety plan’). The composition of Fire and Rescue Authorities would depend on the precise nature of the authority.
 - Influencing PCC decisions and Proactive Scrutiny (largely on Page 8) – the guidance needs to be clear that it is the role of Panels to scrutinise PCCs’ functions after they have been put in place, not to influence PCC decision making before the fact. While there may be legitimate functions touched on in this section (e.g. delegation of PCC complaints), the guidance will need to be careful not to inflate the Panel role to ensure that proactive scrutiny does not become pre-emptive scrutiny, and that it does not seek to influence PCC decisions before they are made - decision making is the role of the PCC alone as the elected representative.
 - Some PCCs have commented that in general many of the approaches suggested in the guidance are ambitious for panels with limited support. It might be helpful to suggest how panels could prioritise their activity to best fulfil statutory role where this is the case.
 - There is no mention of Panels’ FOI and GDPR responsibilities.

Specific Points

1. PCC Functions (pages 4-5)

There have been a number of suggestions that the list of PCC functions could be updated and the presentation improved. At present, some of the functions are in bullet points, some in a text paragraph which follows this. It might be clearer to list them all in bullet points, perhaps on the following lines:

Commissioners are required to:

- Secure the maintenance of the police force for that area, and secure that the police force is efficient and effective
- Set the budget and precept for the force
- Establish local priorities for the force through a police and crime plan which must have regard to the Strategic Policing Requirement set by the Home Secretary and to which the Chief Constable must also have regard
- Hold the Chief Constable to account for the exercise of her/his functions and those under her/his direction and control, including performance against the police and crime plan, and a number of specific functions, such as equalities, the force's engagement with local people, force collaboration arrangements and, most recently, police complaints.
- Use their powers to appoint, reappoint and/or dismiss the Chief Constable, subject to following the process set out in Part 2 of Schedule 8 to the Police Reform and Social Responsibility Act 2011 and regulations made under section 50 of the Police Act 1996
- Publish information specified by the Secretary of State and information that the Commissioner considers necessary to enable the people who live in the force areas to assess the performance of the Commissioner and the Chief Constable
- Monitor complaints made against police officers and staff, whilst having responsibility for complaints made against the Chief Constable
- Commission victims' services
- Enter into collaboration agreements (in consultation with the Chief Constable) between other PCCs and Forces where it would improve the efficiency and effectiveness of one or more forces
- Powers to make crime and disorder reduction grants
- Powers to bring local CSP and LCJB partners together (except in Wales) to enhance criminal justice in the area

These responsibilities were clarified through the Policing Protocol, produced by the Home Office, which defined the relationship between the Commissioner, the Panel and the Chief Constable,¹ and affirms that:

¹ Policing Protocol Order 2011 (SI No. 2744)

- The PCC has responsibility for setting the 'strategic direction and objectives of the Force', and monitoring performance including against the priorities in the police and crime plan
- The PCC has responsibility for holding the Chief Constable to account, but must not fetter the Chief Constable's operational independence or that of the Force
- The PCC will provide the 'local link' between the police and the public, working to 'translate the legitimate desires and aspirations of the public into action'
- The PCC must comply with all reasonable formal requests from the Panel to attend its meetings
- The PCC must prepare and issue an annual report to the Panel covering delivery against the objectives in the police and crime plan.

2. Police and Crime Plans (Pages 12-13)

Alternative wording about what the police and crime plan should cover (replacing existing first 2 paras on this page) might be clearer, as follows:

The plan should set out the following (as per Chapter 3, Section 7 of PRSRA 2011):

- a) the Commissioner's police and crime objectives;
- b) the policing that the Chief Constable is to provide;
- c) the financial and other resources which the Commissioner is to provide to the Chief Constable to exercise their functions;
- d) the means by which the Chief Constable will report to the Commissioner on the provision of policing;
- e) the means by which the Chief Constable's performance in providing policing will be measured;
- f) the crime and disorder reduction grants which the Commissioner is to make, and the conditions (if any) to which such grants are to be made.

The Home Secretary may also give guidance to Commissioners about the matters to be dealt with in the plan

It is also worth noting (also on page 12 – and a point made by a number of our respondents) that the police and crime plan can be reviewed at any time – not just on an annual basis – although in practice most PCCs review it annually. However, it should be mentioned that, following a PCC election (which will take place in May next year), PCCs must issue a police and crime plan within the financial year in which each ordinary election is held.

3. Fire Governance

There have been a number of comments on fire governance and panel role, as follows:

- In relation to Page 6 – the first para after the police fire and crime functions heading should refer to PCCs being a member of the Fire Authority, rather than joining the Fire Authority Board.

- In relation to page 7:
 - Except in Wales, all Commissioners have the power to take on fire (first para) but not all have sought to use it
 - Third para – it might be helpful to clarify that the PCC replaces the fire authority, where they take on this role
 - Fourth para – this may not be legally correct and would need checking. As far as we are aware the head of paid service is designated post in a PCC's office, not delegated, and this is specified as the PCC's Chief Executive in Schedule 1 of the PRSRA 2011.
 - Fifth para – there follows some specific comments on the bullet points here:
 - PFCCs prepare and publish a fire and rescue plan (not implement) but in accordance with the Fire & Rescue National Framework.
 - PCCs must also approve the integrated risk management plan
 - PCCs must set relevant council tax precepts (in addition to setting budget).
 - References to the appointment and dismissal of chief fire officer should include the power to suspend and they must hold the Chief Fire officer and those under his direction and control to account for their functions.
 - Final paragraph – there is a suggesting that Panel members with fire knowledge should be co-opted to the panel. Should a caveat be placed here about this potentially being difficult in areas with many local authorities that might already have a maximum number of panel members?
- In relation to page 9 – the second bullet of first set on the page should be fire and rescue plan, not corporate safety plan (this is a point repeated in the text of the graphic below).
- There should be a separate section on the PCC's relationship with the Chief Fire Officer, either immediately following the section on the relationship with the Chief Constable, or perhaps on page 24.
- On page 34 – the first box should be HMICFRS, not HMIC and it should note that this might also include HMICFRS inspection of fire and rescue service, where PCCs have taken on governance

4. Complaints Handling

There have been a number of comments on this topic, which is of course complicated by the fact that, although the primary legislation has been passed, it has not yet been fully implemented, subject to the completion of regulations. You might want to consider flagging this fact in the section on complaints reforms at pages 18-21 to be clear that panels should not scrutinise PCCs on the assumption that it is. Other comments on this section are:

- There is no 'shift in responsibility' of complaints away from forces to PCCs (forces will remain responsible for the formal as opposed to informal complaints process) – this is about greater transparency and accountability

- The guidance needs to be clear that the PCC (in consultation with the CC) will decide on the model to be adopted locally
- We feel that the document is not as clear as it could be about the distinction between those matters where the Panel scrutinise and support the PCC on their oversight of force complaints, and handling of Chief Constable complaint, compared to the more direct Panel role in dealing with PCC complaints.
- More clarity is needed in respect of the role for the Panel in super complaints which is obviously limited to scrutinising any national recommendations for the PCC that come out of these.
- On PCC complaints:
 - this section should include reference to Deputy PCCs as well.
 - another bullet point should be added to the list at the top of p20 – that the Panel may choose not to refer a complaint if it does not relate to the actions or statutory responsibilities of the PCC.
 - In reporting about PCCs complaints, it is appropriate for the Panel to report on the number of PCC complaints and how they have been dealt with, but not the details of resolution of individual complaints (to protect personal info, etc)

5. Other Specific Points

Our members and their staff have made a number of other detailed points, which are set out below:

- Page 16:
 - First para of item 4 – add ‘resigns’ to the list of situations where an Acting PCC might be needed.
 - Fourth main para of item 4 – dealing with panel’s role in responding to PCC calling on Chief Office to resign – this also applies to chief fire officer.
- Page 42 – The legislation section should also reference the Police and Crime Panels (Precepts and Chief Constable Appoints) Regulations 2012, the Policing Protocol Order, 2011; and the Elected Local Policing Bodies (Specified Information) Order 2011; the Fire and Rescue Services Act 2004 and Fire and Rescue National Framework for England.
- Page 34 – Member champions: whilst noting this approach has some strengths, there are also some challenges there are some challenges that ought to be more fully understood before they are listed as best practice. Given that the Panel is not an ‘overview’ committee, it might be work considering how the development of such a strong champion might interact with their statutory role as a scrutineer. At present, the list of benefits could be viewed by some as diluting scrutiny and creating too close a relationship.

- Pages 37-38 – Panels and Public Engagement. Whilst a number of our members have welcomed the recognition of the support that Panel members can give to PCCs in terms of public engagement, and acknowledge that this section contains some useful advice on increasing the visibility of panel work, it should be clarified in this section that elements of the current text are not mandatory e.g. there is no requirement in law for a big set-piece public meeting linked to the annual report.
- Finally, there is nothing in the document about the conduct of panel members when discharging their functions. We would like to see something about this, preferably with a protocol or code being developed.

We hope this response is a helpful summary of PCC views and would welcome an opportunity to discuss this document with you further. If you have any queries, please get in touch with cat.mcintyre@apccs.police.uk (07714 399754).

APCC Secretariat – April 2019