

## Part 2 – Principles of Decision Making and Good Governance

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## Part 2 – Principles of Decision Making and Good Governance

### **PRINCIPLES OF DECISION MAKING AND GOOD GOVERNANCE**

#### **1. Statement of Principles**

- 1.1 This scheme of governance has been prepared in accordance with the information document published in August 2013 by the Association of Police and Crime Commissioners, in association with the Association of Policing and Crime Chief Executives, the Association of Chief Police Officers, the Association of Police Lawyers, and the Police and Crime Commissioners Treasurers' Society. It is based on the established principles that underpin effective and ethical corporate governance in public service and particularly local authorities , which are set out in the 2007 CIPFA/SOLACE framework *Delivering Good Governance in Local Government*. The principles are helpful in setting the framework for these governance arrangements. It should be noted that the principles set out below refer to authorities but can apply equally to a police context. Those principles are:
  - 1.1.1 Good governance means focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area.
  - 1.1.2 Good governance means members and officers working together to achieve a common purpose with clearly defined functions and roles.
  - 1.1.3 Good governance means promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.
  - 1.1.4 Good governance means taking informed and transparent decisions which are subject to effective scrutiny and managing risk.
  - 1.1.5 Good governance means developing the capacity and capability of members and officers to be effective.
  - 1.1.6 Good governance means engaging with local people and other stakeholders to ensure robust local public accountability.
- 1.2 The scheme of governance upholds the principles of the Policing Protocol as set out in the Schedule of the Policing Protocol Order 2011 which has the overall objective of ensuring an effective, constructive working relationship between the PCC and the CC with the objective of enhancing policing for local communities.
- 1.3 The scheme of governance is intended to ensure that there are clearly defined roles and responsibilities, with the Police and Crime Commissioner being

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responsible for holding the Chief Constable to account and the Chief Constable being responsible for operational delivery.

### 2. **Corporation Sole**

- 2.1 The Police and Crime Commissioner and the Chief Constable are each a “corporation sole” pursuant to the Police Reform and Social Responsibility Act 2011. Each is a separate legal entity with their own legal personality.
- 2.2 The concept of a corporation sole allows a corporation to pass vertically in time from one office holder to the next successor-in-office, giving the position legal continuity with each subsequent office holder having identical powers to those of their predecessor.
- 2.3 As separate corporate entities created by statute, a PCC and a CC have those powers: expressly stated in legislation, necessarily and properly required for carrying into effect the purposes of their incorporation as set out in legislation, and/or that may be fairly regarded as incidental to, or consequential on, those things which legislation authorises.
- 2.4 The Police Reform and Social Responsibility Act 2011 confers wide general powers on the Police and Crime Commissioner and the Chief Constable:
  - 2.4.1 The Police and Crime Commissioner may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of his functions. This includes entering into contracts and other agreements (whether legally binding or not), acquiring and disposing of property (including land), and borrowing money.
  - 2.4.2 The Chief Constable may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of his functions. This includes entering into contracts and other agreements (whether legally binding or not), and acquiring and disposing of property (apart from land). The Chief Constable may only enter into contracts or agreements or acquire or dispose of property with the consent of the Police and Crime Commissioner, but this restriction does not apply to contracts or agreements in relation to the employment of police staff.
  - 2.4.3 The Chief Constable may not borrow money (paragraph 7 of Schedule 2 Police Reform and Social Responsibility Act 2011), save to the extent that such borrowing is permissible pursuant to other legislation.

### 3. **Legislative Context**

- 3.1 The core statutory functions of a Police and Crime Commissioner are to secure the maintenance of the police force, secure that the force is efficient and

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effective, and hold the Chief Constable to account for the exercise of his functions and the functions of persons under his direction and control.

- 3.2 The Chief Constable has the core function of preserving the Queen's Peace and enforcing the law through the officers of the force and its civilian staff who are under his direction and control. The Chief Constable is at all times operationally independent.
- 3.3 The scheme of governance of the Police and Crime Commissioner must be made in accordance with the respective powers of the Police and Crime Commissioner pursuant to the Police Act 1996 (as amended by the Police Reform and Social Responsibility Act 2011) and any subordinate legislation thereto. Due regard must also be given to, and the scheme must be read in conjunction with, all other legal requirements on the Police and Crime Commissioner and/or the Chief Constable, and specifically the provisions of: -
  - 3.3.1 the Policing Protocol as set out in the Schedule of the Policing Protocol Order 2011,
  - 3.3.2 Financial Management Code of Practice ("FMCOP")
  - 3.3.3 the Strategic Policing Requirement ("SPR")

### 4. **Delegation and Consent**

- 4.1 Part 3 of the scheme of governance of the Police and Crime Commissioner and the Chief Constable sets out arrangements for responsibility for functions including delegations and consent,
- 4.2 **"Consent"** refers to the provision of approval or agreement, particularly and especially after due and thoughtful consideration. Transactions entered into following "consent" by the Police and Crime Commissioner to the Chief Constable, will be in the Chief Constable's own name as a separate legal entity, as opposed to the name of the Police and Crime Commissioner.
- 4.3 **"Delegation"** is the assignment of authority and responsibility to another person to carry out specific activities. However the person who delegated the work remains accountable for the outcome of the delegated work. Delegation therefore empowers another person to make decisions. Section 18 of the Police Reform and Social Responsibility Act 2011 permits the Police and Crime Commissioner to delegate his functions. The Police and Crime Commissioner is however prohibited from delegating his function(s) to:
  - 4.3.1 A constable (whether or not in England and Wales).
  - 4.3.2 Another Police and Crime Commissioner.

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- 4.3.3 The Mayor’s Office for Policing and Crime.
  - 4.3.4 The Deputy Mayor for Policing and Crime.
  - 4.3.5 The Mayor of London.
  - 4.3.6 The Common Council of the City of London.
  - 4.3.7 Any other person or body which maintains a police force.
  - 4.3.8 A member of staff of any person/body referred to in 4.3.1 to 4.3.7 above.
- 4.4 The PCC is also prevented from arranging for another person to exercise any of the following functions:
- 4.4.1 Issuing a police and crime plan.
  - 4.4.2 Determining police and crime objectives.
  - 4.4.3 Attending meetings of a Police and Crime Panel in compliance with a requirements by the Panel to do so (pursuant to section 29 of the PRSRA).
  - 4.4.4 Preparing an annual report to a Police and Crime Panel.
  - 4.4.5 Appointing and suspending the Chief Constable or calling upon the Chief Constable to retire or resign.
  - 4.4.6 Calculating a council tax requirement or a budget requirement.

### 5. **Operational Independence**

- 5.1 Police officers are officers of the Crown and hold public office. They are responsible for keeping the Queen’s peace in accordance with the declaration which they make in accordance with section 29 and Schedule 4 of the Police Act 1996.
- 5.2 The Policing Protocol requires, at paragraph 18 that the Police and Crime Commissioner must not fetter the operational independence of the police force and the Chief Constable who leads it.
- 5.3 In recognition of the Police and Crime Commissioner’s role in holding the Chief Constable to account, the Police and Crime Commissioner and the Chief Constable agree that the Police and Crime Commissioner may request that the Chief Constable report to him on any issues of concern which relate to operational matters or any other matter. This will ordinarily take place through

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the governance arrangements of the Joint Management Board. The Police and Crime Commissioner agrees not to use this right to interfere with the operational independence of the Chief Constable. The Police and Crime Commissioner and Chief Constable recognise that there may be circumstances when for reasons of urgency these matters cannot be raised in the Joint Management Board and in those circumstances matters may need to be raised as a priority outside of this meeting structure.

### 6. **General Comments**

- 6.1 This scheme is made in accordance with the respective powers of the Police Reform and Social Responsibility Act 2011 and the Police Act 1996 and any subordinate legislation thereto. Any powers allocated pursuant to the scheme must also be exercised in accordance with the provisions of any policies, procedures, precedents, plans, strategies and budgets of the Police and Crime Commissioner and the Chief Constable (including without limitation the provisions of the police and crime plan).
- 6.2 The delegation of powers to staff pursuant to this scheme should not prevent such person from referring a matter to the Police and Crime Commissioner and/or to the Chief Constable for decision if they wish or consider it appropriate.
- 6.3 This scheme is without prejudice to the ability of the Police and Crime Commissioner to arrange for his Deputy Police and Crime Commissioner (if appointed) to exercise any function of the Police and Crime Commissioner in accordance with section 18(1)(b) of the Police Reform and Social Responsibility Act 2011.
- 6.4 This scheme is also without prejudice to the ability of a deputy Chief Constable to exercise and perform all or any of the functions of the Chief Constable pursuant to section 41 of the Police Reform and Social Responsibility Act 2011.
- 6.5 Staff may give advice to both the Police and Crime Commissioner and the Chief Constable respectively, the basis upon which such advice will be provided will be set out in a service level agreement
- 6.6 Officers will, when considering a professional or technical matter that is within the sphere of competence of another member of professional staff, consult with the appropriate person before authorising the action.

### 7. **Review of this Scheme**

- 7.1 This scheme will be reviewed annually before 31 March.

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### 8. **Access to information on Decision Making**

8.1 There are high expectations (and statutory requirements) in relation to the availability and access to information held by public bodies. The work of the Police and Crime Commissioner will need to take account of such expectations.

8.2 The statutory framework of section 36 of the Police Reform and Social Responsibility Act 2011, the Elected Local Policing Bodies (Specified Information) Order 2011, the Freedom of Information Act 2000 and the Data Protection Act 1998 set minimum standards for publication.

8.3 Any action taken under delegated authority must where significant be recorded by those officers holding the delegation, including recording that relevant legal, financial and other considerations and consultations have been recorded and considered prior to a decision being taken.

### 8.4 **The Roles of Statutory Officers**

8.5 There are legislative requirements upon the Police and Crime Commissioner and the Chief Constable to appoint certain officers:

8.5.1 The Police and Crime Commissioner must appoint a chief executive who has the duties of a head of paid service under section 4 of the Local Government and Housing Act 1989 and monitoring officer under section 5 of that Act.

8.5.2 The Police and Crime Commissioner and the Chief Constable must each appoint a suitably qualified chief finance officer who has a personal fiduciary duty and is responsible for the proper administration of the Police and Crime Commissioner's or Chief Constable's financial affairs, in accordance with sections 112 to 116 of the Local Government Finance Act 1988 (paragraph 6(1) and (4) of Schedule 1 to the Police Reform and Social Responsibility Act 2011). This includes requirements to safeguard lawfulness and propriety in expenditure.

8.5.3 The PCC and the CC may appoint such other staff as each thinks appropriate to enable him/her to exercise his functions (or, in the case of the CC, to otherwise assist the Police Force).

### 9. **Working with other persons**

9.1 Any decisions by the Police and Crime Commissioner or the Chief Constable to enter into arrangements involving working with other persons shall be formalised by appropriate mechanisms.