

Durham Police and Crime Panel

3rd March 2014

Draft Protocol on Exercise of the PCC's Power under Section 38 of the Police Reform and Social Responsibility Act, 2011

Report of Lorraine O'Donnell, Assistant Chief Executive

Purpose of the Report

- 1 To consider a draft protocol between the Police and Crime Commissioner, Police and Crime Panel and the Chief Constable on Exercise of the PCC's Power under Section 38 of the Police Reform and Social Responsibility Act, 2011.

Background

- 2 Section 38 of the Police Reform and Social Responsibility Act 2011 includes powers for the Police and Crime Commissioner to call upon the chief constable of the police force for that area to resign or retire. Schedule 8 of the Act requires the PCC inform the Panel of the reasons to call upon the resignation or retirement of the chief constable.
- 3 The purpose of the protocol is to ensure transparency and fairness and sets out the process and procedures which will be followed by the PCC in the event that he is contemplating the exercise of his power under section 38 of the Act.
- 4 In addition, as supporting information to panel, Appendix 3 contains a letter from the Rt. Hon. Damian Green, MP, Minister of State for Policing and Criminal Justice to Police and Crime Panel Chairs on the Governments response to the Home Affairs Committee on 'Police and Crime Commissioners; powers to remove Chief Constables'.

Recommendations

- 5 Members are asked to approve the draft protocol and that it be signed off by the Chair of the Panel, the Police and Crime Commissioner and Chief Constable.

Background papers

None

Appendix 1: Implications

Finance – None

Staffing – The report includes information on the role of the Panel should the PCC call upon the Chief Constable to resign or retire.

Risk – None

Equality and Diversity / Public Sector Equality Duty – None

Accommodation – None

Crime and Disorder – None

Human Rights – None

Consultation – None

Procurement – None

Disability Issues – None

Legal Implications – The report is required in accordance with the Police Reform and Social Responsibility Act 2011.

**DURHAM POLICE AND CRIME
COMMISSIONER**

AND

DURHAM POLICE AND CRIME PANEL

AND

CHIEF CONSTABLE OF DURHAM

PROTOCOL

**Regarding the Exercise of the PCC's Power under Section 38 of the
Police Reform and Social Responsibility Act, 2011**

Introduction

The Police Reform and Social Responsibility Act, 2011 (PRSRA) introduced new governance arrangements for policing and policing accountability. Principal among these changes is the election of the Police and Crime Commissioner (PCC) and the appointment of the Durham Police and Crime Panel (PCP). The role of the PCP is to scrutinise the decisions and activities of the PCC. In turn the PCC will hold the Chief Constable to account for the delivery of policing services and the achievement of the PCC's objectives.

The PCC and the PCP have already signed up to a Memorandum of Understanding setting out the broad principles of working together to build and nurture an effective partnership in the delivery of the shared and individual responsibilities of the commissioner and the panel.

It was specifically envisaged by the original Memorandum of Understanding that it may be necessary over time to develop and agree additional protocols and procedures to deal with specific issues.

Purpose

In order to ensure transparency and fairness, this protocol sets out the process and procedures which will be followed by the PCC in the event that he is contemplating the exercise of his power under section 38 of the PRSRA, to call upon the Chief Constable to retire or resign.

The provisions set out in this protocol represent statements of intention only and are not legally binding. They may be withdrawn, reviewed or amended at any time by the relevant party.

Policing Protocol

The PCC fully acknowledges the independence of the Chief Constable in operational policing matters as set out in the Policing Protocol (the Protocol).

This is underpinned by the statement in the PCC's Oath of Office that he will not interfere with the Chief Constable's operational independence. Indeed, the PCC and the Chief Constable are required by the Protocol to work together to safeguard the principle of operational independence.

The Police (Conduct) Regulations, 2012 (the Conduct Regulations)

It is acknowledged by the PCC that the existence of the new statutory powers in Section 38 of the PRSRA does not affect the application to Chief Constable of the existing statutory regime for disciplining constables as set out in the Conduct Regulations. The Conduct Regulations contain detailed procedures and incorporate a number of safeguards to ensure that the relevant officer receives a fair hearing.

It is also acknowledged that in enacting Section 38 of the PRSRA, Parliament did not intend that the power contained in that provision should be exercised in a way that would defeat the intent and purpose of the Conduct Regulations.

Accordingly, the PCC undertakes to follow the process and procedures laid down by the Conduct Regulations in respect of any allegations of misconduct by the Chief Constable.

Performance Failure

The PCC intends, subject to exceptional and unforeseen circumstances, to use his power under Section 38 of the PRSRA only in a case of serious failure in the Chief Constable's performance of his duties and functions which could jeopardise the achievement of the PCC's local policing priorities or the effective delivery of local policing needs.

All parties to this protocol agree that the PCC, as the local elected community representative, has a discretion to determine whether the Chief Constable's performance has been so unacceptable, by reference to local needs and priorities, as to compromise the efficiency and effectiveness of the police force and therefore justify his dismissal. However, it is also agreed that the PCC should reach any such

conclusion in good faith and have a reasonable basis for doing so, by reference to the ordinary public law principles of rationality.

The PCC recognises that the use of the power to call upon the Chief Constable to retire or resign should be a matter of last resort and exercised only, where appropriate, after full and frank discussion with the Chief Constable and after a reasonable opportunity has been provided to enable the failure of performance to be rectified.

Process and Procedures

Without prejudice to the statutory process which the PCC is required to follow by virtue of part 2 of schedule 8 to the PRSRA and regulation 11A of the Police Regulations 2003, the PCC will consult with Her Majesty's Chief Inspector of Constabulary at an early stage and shall take account of his/her views in formulating any proposal to call for the Chief Constable's retirement or resignation.

The PCP will permit the Chief Constable to be accompanied by a friend or legal representative at any scrutiny meeting which is held in pursuance of paragraph 15 of schedule 8 to the PRSRA. The PCP will determine the procedure to be followed at the scrutiny meeting. At the meeting the Chief Constable and the PCC will answer on their own behalf any questions put to them by or on behalf of the Panel.

Before making any recommendation in pursuance of the said paragraph 15, the PCP will consult Her Majesty's Chief Inspector of Constabulary and take account of his/her views.

In the event that the PCP recommends that the PCC should not call for the retirement or resignation of the Chief Constable, the PCP will provide the PCC with the full written reasons for the recommendation. The PCC will not reject the recommendation until he has notified the Chief Constable and PCP in writing why he is minded to reject it.



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All Police and Crime Panel Chairs

03 DEC 2013

THE GOVERNMENT RESPONSE TO THE HOME AFFAIRS SELECT COMMITTEE REPORT, POLICE AND CRIME COMMISSIONERS: POWER TO REMOVE CHIEF CONSTABLES

The Government published a response to the Home Affairs Select Committee report *Police and Crime Commissioners powers: power to remove chief constables* on 3 December.

The Committee's report stated that it is right that PCCs should have the initiative in removing a chief constable, but recommended that police and crime panels (PCPs) should fully exercise their powers of scrutiny in examining and deciding whether the proposed removal of a chief constable is justified. Such decisions, once made, should be accompanied by all the reasons arrived at in the case.

The Government agrees with the Committee that PCPs should fully exercise their powers of scrutiny in such cases.

Transparency is a vital element of the reforms which brought in PCCs and it is important that information is readily available to the public to help them in holding their PCCs to account. In support of this, PCPs were introduced in every police force area to scrutinise the actions and decisions of each PCC.

In the Police Reform and Social Responsibility Act 2011, Parliament gave PCPs a wide remit to review or scrutinise decisions made, or other action taken, by the PCC in connection with the discharge of the commissioner's functions. This is to ensure there are appropriate checks and balances on the PCC.

This of course applies in situations where a PCC decides to suspend a chief constable, or calls upon a chief constable to resign or retire. In such instances, the PCP has the power to summon the PCC to answer questions, and allow them to establish and challenge the reasons for the suspension or removal.

You have a vitally important role to play in making sure the work of PCCs is scrutinised and information is available for the public. Many of you will have already been involved in the appointment of chief constables and will be aware of the need to not only scrutinise the process of the appointment, but also the decisions taken. I am confident you will continue to use the full range of your powers as set out in legislation.

Yours sincerely,

Damian Green

The Rt Hon Damian Green MP