

Middlesbrough  
Council



AGENDA ITEM: 5

## OVERVIEW AND SCRUTINY BOARD

10<sup>th</sup> JANUARY 2012

**Police and Crime Commissioners and Police and Crime Panels.**

### PURPOSE OF THE REPORT

- 1 To inform Members of the Overview and Scrutiny Board of the report which is scheduled to be presented to the Executive on 31<sup>st</sup> January 2012 regarding Police and Crime Commissioners and Police and Crime Panels.

### RECOMMENDATION

- 2 It is recommended that the Overview and Scrutiny Board addresses the report and the statutory programme which aims towards the election of PCCs in November 2012.

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# MIDDLESBROUGH COUNCIL

## EXECUTIVE REPORT

**Police and Crime Commissioners and Police and Crime Panels  
Executive Member for Community Protection, Councillor Julia Rostron  
Director of Adult Social Care and Environment, Mike Robinson  
31 January 2012**

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### PURPOSE OF THE REPORT

1. To provide information on Police & Crime Commissioners and Police and Crime Panels and propose arrangements to implement the changes required by the Police Reform and Social Responsibility Act 2011.

### SUMMARY OF RECOMMENDATIONS

2. That the report be noted.
3. That the proposed composition of the Cleveland Police & Crime Panel, i.e. two Councillors from Hartlepool, three from Middlesbrough and Redcar & Cleveland, and four from Stockton-on-Tees, be approved.
4. That the proposal for Stockton to act as lead authority in respect of the Panel be approved.
5. That the Cleveland Police & Crime Panel will have reciprocal observer arrangements with the Durham & Darlington Police & Crime Panel.

### IF THIS IS A KEY DECISION WHICH KEY DECISION TEST APPLIES?

6. It is over the financial threshold (£150,000)   
It has a significant impact on 2 or more wards   
Non Key

### DECISION IMPLEMENTATION DEADLINE

7. For the purposes of the scrutiny call in procedure this report is

Non-urgent   
Urgent report

If urgent please give full reasons

## BACKGROUND AND EXTERNAL CONSULTATION

8. The Police Reform & Social Responsibility Act received Royal Assent on 15 September 2011. It provides for the election of a Police & Crime Commissioner (PCC) for all provincial Police forces in England & Wales, and for the establishment of a Police & Crime Panel (PCP) to scrutinise the functions of the Commissioner. It makes changes also to the local authority licensing function though that will be the subject of a later report.
9. The first PCCs will now be elected on 15 November 2012 (not in May 2012, as originally proposed) and the previous proposal for a term limit of two terms has been removed. The first term will run to May 2016, and terms will be for four years each thereafter. The PCC will be 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) and the Chief Constable may provide professional advice and recommendations
10. The PCCs will have the legal power and duty to:
  - set the strategic direction and objectives of the force through the 5 year Police and Crime 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;
  - decide the budget, set a precept, allocate assets and funds to the Chief Constable;
  - appoint, and where necessary, remove the Chief Constable;
  - maintain an efficient and effective police force for Cleveland;
  - 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 the Chief Constable;
  - 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.

11. A PCC will have 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 (CSPs) 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 power currently vested in the Home Secretary, to give formal approval to mergers of Community Safety Partnerships (CSPs), but only when requested by the CSPs concerned, and signed off by all the 'responsible authorities' on each CSP involved (i.e. Police, Council, Fire Authority, PCT and Probation Trust)
  - PCCs and CSPs will also have reciprocal duties to co-operate with each other.
  
12. 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;
  - having regard to the Strategic Policing Requirement when exercising their policing activity in respect of their force's national and international policing responsibilities;
  - 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 (Association of Chief Police Officers) rank (Assistant Chief Constable and above), 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.
  
13. The Act requires the establishment of a Police & Crime Panel of at least 12 and maximum of 20, but funding for administrative support is only available for 12. At

least 10 will be councillors and the rest co-optees, with a minimum of two co-opted members. It is intended that these be in place prior to the November 2012 elections. Elected Mayors will automatically take one of the places for their authority (unless also elected as PCC).

14. 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 or her statutory functions. This includes:
  - the power of veto, over the PCC’s proposed budget;
  - the power of veto, over the PCC’s proposed candidate for 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;
  - 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 (Independent Police Complaints Commission).
15. 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 their officers and staff. The accountability of the Chief Constable is to the PCC and not to the Police and Crime Panel.
16. The establishment of PCCs is intended to allow the Home Office to withdraw from day-to-day policing matters, and allowing local communities to hold the police to account.
17. 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.
18. The current arrangements are defined in part by the Police Reform and Social Responsibility Act 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.
19. 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’.

20. 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;
21. 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.
22. 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 (Her Majesty's Inspectorate of Constabulary) has stated, by its nature, is fluid and context driven.
23. 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.
24. 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.
25. 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.
26. It is proposed that the initial composition of the Cleveland Police & Crime Panel, based on population, will be as follows:-
- Hartlepool Borough Council – two Elected Members
  - Middlesbrough Borough Council – three Elected Members
  - Redcar & Cleveland Borough Council – three Elected Members
  - Stockton-on-Tees Borough Council – four Elected Members
  - Total 12 Elected Members

27. It is also proposed that Stockton-on-Tees Borough Council will act as lead authority for the Cleveland Police & Crime Panel. A political and geographical balance will be required.
28. It is proposed that the Cleveland Police & Crime Panel and the Durham & Darlington Police & Crime Panel extend reciprocal observer arrangements, i.e. one or more members of each panel will be invited to sit as an observer at the meetings of the other Panel.
29. The proposals set out at paragraphs 26 to 28 above were discussed and supported at a meeting of the Tees Valley Chief Executives Group on 17 August 2011.
30. Current police authorities will oversee effective transition to the Office of the Police and Crime Commissioner and creation of Police and Crime Panels. They will therefore need to:
  - plan and deliver an effective transition programme whilst recognising that the effective delivery of police authority and force business continues to remain paramount.
  - be mindful of the continuing ongoing challenges facing police authorities and the police service, particularly the current difficult financial context, to continue secure value for money and financial efficiencies.
31. The Home Office has established a Police and Crime Commissioners Transition Programme Sponsorship Board, chaired by the Minister for Policing and Criminal Justice, Nick Herbert MP. Board membership consists of key policing bodies: the Association of Police Authorities: Association of Chief Police Officers (ACPO); Association of Police Authority Chief Executives (APACE); Association of Police Authority Treasurers (PATs) and the Local Government Association (LGA).
32. A number of projects are ongoing and the Board will work with the Government to facilitate effective transition from Police Authorities to PCCs. Work in progress includes:
  - The Strategic Policing Requirement which will bridge the local policing agenda with regional and national policing needs.
  - A Protocol setting out parameters within which the PCC and Chief Constable will deliver and govern.
  - A policy on complaints against PCCs.
  - A Financial Management Code of Practice which PCCs must comply with; and
  - Agreement of transfer schemes setting out how assets, staff and liabilities will transfer to new arrangements.

## **IMPACT ASSESSMENT (IA)**

33. This report is not subject to an Equality Impact Assessment because the matters at the discretion of the Council do not have a significant impact on equalities issues.

## **OPTION APPRAISAL/RISK ASSESSMENT**

34. These arrangements are statutory.

### **COMMENT**

35. These new arrangements will radically alter the landscape for delivery of the community safety agenda, which links into other policy priorities including economic regeneration, life chances for children and young people, healthy communities, housing, stronger communities etc. Discussions are taking place between lead officers for community safety across the four Cleveland Boroughs, and the new Chief Executive of the Police Authority, with a view to ensuring an orderly transition to the new arrangement.

## **FINANCIAL, LEGAL AND WARD IMPLICATIONS**

### **Financial**

36. 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.
37. The Chief Constable has day-to-day responsibility for managing allocated budgets after they have been approved by the PCC, consistent with the objectives set by the PCC.
38. The PCC, advised by their Chief Finance Officer, must be satisfied that the Chief Constable exercises financial responsibilities in a proper and effective manner.
39. 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.
40. The Home Office Funds currently received by the Council (subject to on going reductions) will transfer to the PCC some time after November. The area based grant to the Council (currently £319,401) will be lost. This will require budget adjustments e.g. on 'young people substance misuse' expenditure (£112,147) which will be done as part of the budget setting process. It is anticipated that the Dept Health monies that fund drug and alcohol work will continue to be paid to the local authority.
41. There will be a Government grant of £30,000 per year plus £920 per panel member, payable to the lead authority (Stockton) to cover the administration costs of the role. There are no payments to Panel members due from the PCC and it will be for the constituent Councils to determine whether a remuneration is paid to their members of the PCP. Councils would need to fund any allowances they deemed appropriate to be paid to Panel members, as there would be no provision within the police precept for attendance allowance.



## **Ward Implications**

42. There are no ward implications.

## **Legal Implications**

43. The proposals set out at the beginning of the report are intended to discharge the Council's new responsibilities.

## **RECOMMENDATIONS**

44. That the report be noted.
45. That the proposed composition of the Cleveland Police & Crime Panel, i.e. two Councillors from Hartlepool, three from Middlesbrough and Redcar & Cleveland, and four from Stockton-on-Tees, be approved.
46. That the proposal for Stockton to act as lead authority in respect of the Panel be approved.
47. That the Cleveland Police & Crime Panel will have reciprocal observer arrangements with the Durham & Darlington Police & Crime Panel.

## **REASONS**

48. To ensure that the Cleveland Police & Crime Panel begins to operate in a timely manner, and exercises its functions effectively.
49. To ensure collaboration and facilitate the exchange of good practice.

## **BACKGROUND PAPERS**

50. The following background papers were used in the preparation of this report:
- Tees Valley Chief Executives Group Report 17 August 2011
  - Middlesbrough Council's Informal Briefing paper August 2011

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