Home Office

THE HOME OFFICE RESPONSE TO THE COMMITTEE ON STANDARDS IN PUBLIC LIFE REPORT:

Tone from the Top: Leadership, Ethics and Accountability in Policing

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

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Home Secretary Foreword:

The Home Office welcomes the report from the Committee on Standards in Public Life (CSPL). The system of policing in England and Wales is based on the Peelian principle that the public are the police, and the police are the public. To maintain the fundamental tenet of policing by consent it is essential that the public have trust in the officers charged with their protection. High ethical standards run to the very heart of this issue, and maintaining these standards is the responsibility of every serving officer, and everyone associated with police leadership.

The introduction of Police and Crime Commissioners (PCCs) marked the biggest reform of police governance in a generation. Directly elected by the public that they serve, PCCs are driving reform and innovation in policing. As visible and accountable leaders PCCs have a key role to play in ensuring ethical standards permeate all elements of policing. This is not a responsibility they can bear alone, so it is vitally important that officers of every rank play their part in instilling ethical standards, a responsibility reinforced by the College of Policing's Code of Ethics, and we welcome the Committee's recognition of the Code's importance.

PCCs hold their Chief Officers to account on behalf of the public, and are, themselves, ultimately accountable at the ballot box. It is imperative that PCCs themselves operate with integrity, and there are a number of checks and balances in place. PCCs operate in the full gaze of the media, they are scrutinised by Police and Crime Panels (PCPs) in public meetings, who are responsible for examining how the PCC fulfils all of their functions. Scrutiny and transparency are central to the PCC system, underlining the PCC's democratic accountability to the public.

The Home Office recognises the important contribution the Committee's review can make to the drive to improve ethical standards within policing, and as such we support the broad principle running through the report; put simply, ethics and accountability of leadership are fundamental to our policing system. The Committee's specific conclusions and recommendations are addressed in turn below.

Recommendations

1. The Association of Police and Crime Commissioners, working with the Association of Policing and Crime Chief Executives should develop a nationally agreed minimum code of conduct by the end of 2015, which all current PCCs should publicly sign up to by then, and all future PCCs on taking up office.

Development of a nationally agreed minimum code of conduct is a matter to be determined collectively by individual PCCs, along with their Chief Executives (as part of their Monitoring Officer role).

The Police Reform and Social Responsibility Act 2011 already provides the broad parameters within which PCCs must operate. The legislation is necessarily permissive which encourages PCCs to innovate, allowing them to deliver policing more efficiently and effectively within their local area.

PCCs are ultimately held to account by the public, via the ballot box.

That being said, the Home Office sees no problem with the development of a minimum code of conduct, should PCCs wish to pursue this. Such a code could supplement the transparency principle that underpins the PCC policy, and as such we support the broad principle that this recommendation is seeking to achieve.

2. *PCCs and their Deputies should receive an ethical component as an essential part of their induction. While this should be locally tailored and delivered it should cover the Seven Principles of Public Life, the Association of Police and Crime Commissioners Ethical Framework and the College of Policing's Code of Ethics. This is to provide an understanding of ethics in practice and the role of PCCs as ethical leaders, promoting and modelling the high standards of conduct for which they hold others to account.*

The Government believes that it is for individual PCCs and their offices to determine an ethical framework that, as the Committee's report advises, is locally tailored and which works for that particular force area. The respective Offices of the PCCs, in conjunction with the Association of PCCs, are responsible for coordinating the individual induction of newly elected PCCs.

The Policing Protocol already states that all parties must abide by the Seven Principles of Public Life (the "Nolan Principles"), and as such, the Home Office supports the general principle of this recommendation.

3. A Deputy PCC should be subject to the same mandatory national minimum code of conduct as PCCs and publicly available protocols should be in place for their relationships with other employees of the PCC.

This is a matter that should be determined locally by individual PCCs and their Deputies, where relevant. Again, the Home Office considers that this can broadly be categorised as good practice and consequently we support the principle lying behind this recommendation, subject to the development of a code under Recommendation 1 (which does not imply the code would be mandatory).

4. The Association of Police and Crime Commissioners, Association of Policing and Crime Chief Executives, the National Police Chiefs' Council and Local Government Association should work collaboratively to produce a model Memorandum of Understanding between the PCC and Chief Constable to include working arrangements, recognition of the role of statutory officers and a supporting statutory officer protocol.

Although this recommendation is directed at the Association of Police and Crime Commissioners, Association of Policing and Crime Chief Executives, the National Police Chiefs' Council and the Local Government Association, the Home Office has some concerns as to its breadth and potential impact. As the Committee's report acknowledges, the Policing Protocol already sets out how the functions of the PCC, Chief Constable and Police and Crime Panel are exercised in relation to each other. Any Memorandum of Understanding setting out the working arrangements between PCCs and Chief Officers should not, in any way, cut across the Policing Protocol, which the Home Office quite rightly regards as being the statutory foundation on which their relationship is based.

The Home Office is broadly supportive of the recommendation of a statutory officer protocol, although consider this to be a matter to be determined locally.

5. Joint Audit Committees should publish an Annual Report in a form that is easily accessible to the public.

The Home Office is pleased to see that the Committee's research shows that Joint Audit Committee arrangements are "working well". As transparency underpins the PCC model, the Home Office is broadly supportive of the principle that Joint Audit Committees should publish reports. The Home Office has set out, through the Police Reform and Social Responsibility Act 2011, and its associated secondary legislation, the documents that must be published by PCCs and other bodies, such as PCPs, sets a high bar for transparency. To publish further information, in addition to that which has been set out in statute, should be a decision taken locally. The decision to publish Joint Audit Committee reports, and whether an annual report is necessary should therefore be a decision for each Joint Audit Committee. If the Home Office was to mandate the publication of annual reports, as suggested, it would risk creating a bureaucratic burden which may not be required.

6. PCCs' responsibility for holding Chief Constables to account on behalf of the public should explicitly include holding the Chief Constable to account for promoting ethical behaviour and embedding the College of Policing's Code of Ethics. Each PCC's Police and Crime Plan should set out how they intend to do this, and their Annual Report should show delivery against the objectives set out in the plan.

It is the responsibility of the PCC to hold the Chief Constable to account for all of their functions, and Home Office would expect this to include holding them to account for promoting ethical behaviour within their force. The College of Policing's Code of Ethics applies to every officer in every force, and the Home Office would expect PCCs to consider this when holding the Chief Constable to account.

The PCC for each force area is responsible for publishing a Police and Crime Plan, and it is right that they have local flexibility to determine exactly what this should contain. Whilst the Home Office supports the principle that PCCs should take ethics into account, it is for PCCs to take decisions on how they wish to hold their Chief Constable to account locally.

7. The Police and Crime Commissioner Elections Order should be amended so that all candidates for the post of PCC should be required to publish their responses to the Committee's Ethical Checklist. For the May 2016 elections all candidates should be asked to consider and answer the Checklist and the Committee will be encouraging relevant media outlets to play their part in seeking out and publicising their responses.

The Home Office supports the general principle behind the Committee's proposed Ethical Checklist which we believe, if followed, can only add to the level of transparency already inbuilt within the PCC governance model.

That being said, the Home Office is of the view that it is for individual PCCs to determine whether they follow the Committee's Checklist. The Home Office therefore rejects the Committee's recommendation to amend the Police and Crime Commissioner Elections Order.

8. Drawing on existing good practice and experience, the Association of Police and Crime Commissioners, Association of Policing and Crime Chief Executives and the Local Government Association should work together to develop national guidance on the meaning of a decision of 'significant public interest', so that it is better understood when PCCs should publish records of such decisions.

The Elected Local Policing Bodies (Specified Information) Order 2011 sets out a range of information that each PCC must publish. The Order states that the PCC must publish a record of each decision of 'significant public interest', alongside minutes of meetings where such matters are discussed. However the Home Office

would not be opposed to a definition being used so long as the work to define this is led by local leaders, and is agreed by all of the associations listed by the Committee.

9. Police and Crime Panels should review the PCC's Annual Report in public session attended by the PCC as part of their annual scrutiny programme and make any recommendations as appropriate.

The Home Office does not believe that this recommendation is required. Section 28(4) of the Police Reform and Social Responsibility Act 2011 states that Panels must convene a public meeting as soon as is practicable following receipt of the Annual Report, whilst section 12(3) of that Act states that the PCC must attend that meeting. Section 12(5) of that Act provides Panels with flexibility in terms of how they respond to such a report, this includes making recommendations.

10. As a matter of good practice:

- *PCCs should publish a forward plan of decisions identifying the subject matter of the decision, why it is key, the meeting at which the decision is due to be taken, who will be consulted before the decision is taken and what reports/papers will be available for inspection; and*

- *Police and Crime Panels should produce a forward plan of work specifying, as appropriate, the information required from PCCs in order for them to carry out that work.*

The Home Office has been approached by several PCPs indicating that having access to a forward plan of key decisions to be made by a PCC, would assist in their planning of meetings. The Home Office would not wish to restrict PCCs by mandating that all key decisions should conform to this plan (as some may need to be made as a matter of urgency – such as a decision to suspend the Chief Constable), but we recognise that an indicative forward plan would be helpful for both the PCP, and any members of the public with a particular interest. Similarly a forward plan of PCPs' work could assist the PCC in preparing for a scrutiny session, again any such plan would need to be flexible to ensure that PCCs and PCPs could respond to unfolding events. The Home Office would not wish to mandate the publication of these plans, but sees that this could be an example of good practice that PCCs and PCPs may wish to adopt.

11. The Home Secretary should conduct an urgent review of whether there are sufficient powers available to take action against a PCC whose conduct falls below the standards expected of public office holders.

The conduct of PCCs is assessed by the most effective check available for any politician – the ballot box. With the introduction of PCCs the public have, for the first time, a direct say in how their police force is run, and where PCCs fail to meet the standards expected, the public can now cast judgement with their vote.

The Home Office recognises that the sanctions established through the Police Reform and Social Responsibility Act 2011 should be kept under review, as is the case with all legislation, but rejects the need for an urgent review.

Police and Crime Panels have a responsibility to scrutinise how the PCC caries out all of their functions, and call a PCC to appear before them and account for their actions. There are also strong rules in place regarding who can stand for and hold the office of PCC. For example, a PCC will be disqualified from being elected as, or being, a PCC if he or she is convicted of any imprisonable offence (whether or not they actually receive a custodial sentence), this is not the case for elected Mayors or Members of Parliament. Further, Police and Crime Panels hold powers to suspend a PCC in the event of their being charged with an offence which carries a maximum sentence exceeding two years' imprisonment.

The governance system established through the 2011 Act has proved itself effective; in the one instance where a PCC's behaviour has resulted in a demonstrable loss of public confidence, the Police and Crime Panel held a scrutiny meeting and called upon the PCC to resign, which the PCC did shortly after.

Whilst the Home Office does not agree with the call for an urgent review we will, as is appropriate for all legislation, keep under ongoing consideration whether any amendments are needed to the process used for complaints made against a PCC.

Further, the Home Secretary has been clear that there is a debate to be had on the issue of recall for PCCs, and actively supported the policy of recall for MPs. Extending the policy of recall beyond MPs, to other elected offices requires careful consideration. The Home Secretary is clear that she wishes to see this debate continue.

12. To demonstrate an equivalent level of transparency and accountability to the Chief Constables that they oversee, the Association of Police and Crime Commissioners and Association of Policing and Crime Chief Executives should work together to host and make publicly available a list of PCCs' pay and rewards, gifts and hospitality and outside business interests, including notifiable memberships, in an easily accessible format.

The Elected Local Policing Bodies (Specified Information) Order 2011 requires PCCs to publish information on their own pay, rewards, gifts, hospitality and outside business interests. We are clear that it is not the role of central Government to collate all of these returns into a single list, as the information is of interest to individual local communities.

13. *Chief Constables and PCCs should keep the arrangements for gifts, gratuities and hospitality registers and business interests, including notifiable memberships, and other employment under regular review as part of ensuring and evidencing that the Code of Ethics remains embedded in everyday practice.*

As set out above, PCCs are required to publish information set out by the Secretary of State in the Elected Local Policing Bodies (Specified Information) Order 2011. This includes information on gifts and hospitality, and a register of all interests (including paid employment and all pecuniary interests). The Home Office expects all of this information to be kept up to date.

The College of Policing, who are working on a package of measures to improve transparency and an open culture within the police, are publishing links to force websites which sets out information on chief officers' gifts and hospitality and business interest.

The Home Office supports the Committee's recommendation that these arrangements should be kept under review and, indeed, expects this to be the case. It remains the responsibility of the PCC's monitoring officer to ensure compliance with legislation.

14. Where a Joint Chief Financial Officer is appointed, an explicit policy and appropriate controls should be put in place to manage any potential conflicts of interest; be made publicly available; and regularly monitored by the Joint Audit Committee.

Whilst we support the principle of this recommendation, a range of pre-existing and published controls are in place to ensure that conflicts of interest are appropriately managed.

PCCs and Chief Constables are required to ensure appropriate financial controls are in place to ensure sound financial management and public money is safeguarded. As finance professionals, Chief Financial Officers are required to follow prescribed and published Codes of Ethics as set out by professional accounting bodies (as well as that produced by the International Federation of Accountants) and these include the duty to identify and manage any potential conflicts of interest. Furthermore CIPFA's published 'Statement on the Role of the Chief Finance Officer of the Police and Crime Commissioner and the Chief Finance Officer of the Chief Constable' codifies the key responsibilities and personal duties of the CFO. It sets out that where a joint Financial Officer is appointed the CFO will need to consider if the principles outlined in the CIPFA statement can be fully and effectively delivered and the professional responsibilities of the CFO maintained, which includes the effective management of any potential conflicts of interest.

15. Where a Joint Press/Media Officer is appointed, an explicit policy and appropriate controls should be put in place to manage any potential conflicts of interest, be made publicly available, and regularly monitored by the Joint Audit Committee.

The Home Office is not aware of any evidence to suggest that in force areas where a joint press/media officer has been appointed it is causing any specific concerns. In the force areas identified by the Committee as having a joint press function, local arrangements are in place to mitigate any associated risks. The Home Office believes that it should be for PCCs and Chief Officers to determine what controls are necessary to manage any potential conflicts of interest within their area.

16. The Joint Audit Committee should scrutinise the basis of the assurances provided as to the integrity of crime data, including the related performance management systems.

The Home Office supports the premise that where Joint Audit Committees exist PCCs should seek assurances from chief constables that crime is recorded ethically and the data produced by the force is accurate, although it is for PCCs to decide on local structures. As the Home Secretary made clear in November 2014, following the publication by HMIC of their crime data integrity thematic report, it is never acceptable for the police to mis-record crime. Failing to do so not only lets down victims, but also the wider public who must be able to rely on the statistics to hold their police to account through their PCC, and to be confident that police will record crimes ethically and with integrity. We are pleased the committee has acknowledged the work the Home Office has already done to improve the integrity of crime statistics, and the introduction, by the Home Office in the Counting Rules, of the new vision statement recognising the Code of Ethics.

17. PCCs and their Deputies should publish a register of meetings with external stakeholders and routinely publish information about all significant meetings involving external attempts to influence a public policy decision. The published information should include dates of meetings, details of attendances and meaningful descriptors of subject matter. It should normally be published within one month on their website in an easily accessible format.

Whilst the Home Office believes that this recommendation should be a matter for individual PCCs, we consider that it is in line with the Leveson recommendations on police interaction with the media and external stakeholders and, as such, we are broadly supportive of the underlying principle. In developing local procedures, PCCs and their Deputies will need to be mindful of the information in their care, and ensure that the mechanism for publishing potentially sensitive information is robust, and meets appropriate confidentially standards.

18. All parties with responsibility for complaints should make clear and actively publicise where their responsibilities – especially in relation to actual investigations and their outcomes – begin and end.

The implementation of the proposed changes to the police complaints and disciplinary systems should be monitored locally by PCCs and nationally by the Home Office, IPCC and HMIC.

Responsibility for handling police complaints through local resolution should not sit with those with appellate responsibility in relation to the same complaints.

The Home Office should consider whether or not complaints about PCCs should continue to be handled by the IPCC.

The Home Office welcomes the Committee's support for reform of the police complaints system. The Government is committed to overhauling the system by implementing the proposals set out in the Government's response to the consultation *Improving police integrity: reforming the police complaints and disciplinary systems* (March 2015). Plans for these reforms were announced as part of the Queen's speech in May 2015.

These reforms will result in a system that is more customer focused and easier to understand. Alongside forces and the Independent Police Complaints Commission (IPCC), the reforms will give a greater role to PCCs. The Home Office agrees with the Committee that clarity around responsibilities in the new system is of paramount importance and will ensure that the reforms enable this.

The Home Office agrees that the implementation of its reforms will need to be monitored. PCCs are directly accountable to their electorates and to preserve that accountability they are not subject to central Government targets, but the Government has acknowledged the need for consistency and transparency in the way complaints are dealt with. PCCs, HMIC and the IPCC will all have a role in oversight of the reformed complaints system and, therefore, the impact of the reforms. The Home Office will, as a matter of course, monitor the implementation and impact of policy change.

In respect of the third recommendation, as the Committee states, in the *Improving police integrity* consultation response, the Home Office recognised the need to avoid conflicts of interest in situations where the PCC has the appellate responsibility in relation to a complaint dealt with by that PCC's staff. The Home Office will consider how best to ensure that such conflicts are minimised in the new system.

In relation to the final part of this recommendation, the Home Office's view is that the IPCC, given its existing broad remit over bodies exercising policing functions, is best suited to investigating criminal allegations made against PCCs.

With the increasing role for PCCs within the police complaints system, we will look again at the way in which PCPs handle complaints against PCCs.

19. The Committee endorses the Home Affairs Committee's recommendations that:

- *The Home Office bring forward proposals to amend the powers of commissioners to suspend or remove chief constables under Section 38(2) of the Police Reform and Social Responsibility Act 2011 by stipulating the grounds on which they may do so.*

- *The Home Office should also provide guidance to commissioners on the use of their powers in both respects. In the case of a suspension there should also be a clear system of safeguards similar to those which guide suspension in respect of conduct.*

- *Police and Crime Panels inquire and report into the circumstances whenever a chief constable's service is brought to an end irrespective of whether the Schedule 8 scrutiny process is formally engaged.*

- *The Home Office bring forward proposals to extend the Schedule 8 process to include scrutiny by the police and crime panel where a commissioner chooses not to agree to an extension of the chief constables' contract to bring it in line with the process for the removal of a chief constable.*

These recommendations are taken from the Home Affairs Select Committee Report *Police and Crime Commissioners: progress to date*, published in April 2014. The Government's position on these issues has not changed. We believe that the process for the removal of a Chief Constable is set out very clearly in the Police Reform and Social Responsibility Act 2011, and the Government has made clear that there are appropriate safeguards in place regarding the removal and suspension of Chief Constables.

The Home Office does not wish to prescribe in legislation the circumstances in which a PCC can suspend, or call on a chief constable to resign or retire However, this does not mean that a PCC can suspend or call on the Chief Constable to retire or resign on any pretext. The PCC must act reasonably and fairly.

The PCP has a wide remit to review or scrutinise decisions made, or other actions taken, by the relevant PCC in connection with the discharge of the commissioner's functions. This includes scrutiny of a decision by a PCC not to extend a chief constable's fixed term appointment or to suspend a chief constable.

The Home Office believes that PCPs have significant powers of scrutiny should a PCC look to remove the chief constable. There are several minimum steps to pass through before a chief constable can be removed, including a scrutiny hearing of the PCP where the PCC and chief constable are both entitled to attend to make representations, regardless of whether the PCP wishes to call them. The panel may also opt to seek the views of HMIC. The PCC must consider the panel's recommendation and notify the panel whether or not they accept the recommendation. The Home Office will continue to work with Panel chairs and the LGA to ensure that PCPs are fully aware of their role.

20. PCCs' appointment procedures should comply with open and transparent appointment processes including:

- *A requirement for there to be an independent member on the appointment panel set up to oversee the appointments process for Chief Constables and senior Office of PCC staff; and*

- *A requirement that a criterion for selection be that the panel is satisfied that the candidates can meet the standards of the Seven Principles of Public Life.*

- *Details of the independent panel member should be published.*

- *Where a PCC intends to appoint a deputy PCC the PCC should disclose that fact and the intended Deputy (if known) at the time of the election.*

- *A decision to suspend or accept a resignation of a Chief Constable or to appoint a Deputy PCC should be regarded as a decision of 'significant public interest'.*

The process for appointing a Chief Constable is set down in the Police Reform and Social Responsibility Act 2011, and we would suggest that appropriate scrutiny of the process is already included in that legislation, including the requirement for the PCC to seek the views of the Police Crime Panel.

Home Office Circular 20/2012 sets out the legal requirements and principles for the appointment of Chief Constables. This states that those responsible for the selection and appointment of chief officers must observe the three principles of merit, fairness and openness, and that the PCC should involve an independent member during assessment, short listing and interviewing of candidates.

We support the principle of open and transparent recruitment, and would see the adoption of the practices suggested by the Committee as a matter for individual PCCs.

The Home Office believes that, where a PCC intends to appoint a Deputy, it would be good practice to make this known before election, and support the Committee's recommendation on this in principle. The Home Office does not believe that this should be a firm requirement, as it would restrict local flexibility and the ability of the PCC to adapt their practices.

There are scrutiny arrangements written into the Police Reform and Social Responsibility Act 2011 for the appointment of a Chief Constable, and for the appointment of senior staff within the OPCC, this includes the appointment of a Deputy PCC. We would support the principle that these are decisions of significant public interest, and would suggest that it is for this reason that legislation provides for appropriate scrutiny.

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