

**LEICESTER, LEICESTERSHIRE AND RUTLAND
POLICE AND CRIME PANEL – 26 JUNE 2013**

REPORT OF THE COUNTY SOLICITOR

CONSTITUTIONAL AND GOVERNANCE ARRANGEMENTS

Purpose of the Report

1. The purpose of this report is to:
 - (a) advise the Panel of action taken by the County Solicitor to produce further procedures in relation to the operation of arrangements for dealing with complaints against the Police and Crime Commissioner;
 - (b) facilitate discussion with a view to clarifying issues relating to declarations of interests by members of the Panel; and
 - (c) seek the agreement of the Panel on two issues relating to constitutional governance arrangements, the relationship with the Joint Audit Risk and Assurance Panel (JARAP) for the Police and Crime Commissioner and Chief Constable and the payment of expenses or allowances to independent members.

Introduction

2. The following documents have been produced to provide the constitutional framework for the operation of the Police and Crime Panel:
 1. Terms of Reference
 2. Panel Arrangements
 3. Rules of Procedure – relating to conduct of meetings
 4. Rules of Procedure – working arrangements
 5. Guidance on conducting Confirmation Hearings
 6. Protocols with other bodies
 - Police and Crime Commissioner
 - Crime and Disorder Overview and Scrutiny at Leicestershire County Council
3. These documents have been published on the website for the Police and Crime Panel and are accessible at www.leics.gov.uk/policeandcrimepanel.htm.

The procedures for dealing with complaints against the Police and Crime Commissioner are discussed below.

4. The process for agreeing those documents and any amendments to them does vary according to the nature of the issue under consideration, as follows:-
 - (a) Terms of Reference, Panel Arrangements: to be agreed by all local authorities on the Panel (required by law)
 - (b) Rules of Procedure, relating to both conduct of meetings and working arrangements: to be agreed by the Panel (required by law)
 - (c) Guidance on conducting Confirmation Hearings: agreed by the Panel on 20 December 2012
 - (d) Protocols with other bodies require the agreement of the Panel and the other bodies concerned and were agreed by the Panel on 20 December 2012.
5. In relation to the operation of complaints procedures against the Police and Crime Commissioner or his Deputy(ies), if appointed, the Panel has set the general direction of travel and delegated to the County Solicitor responsibility for formulating detailed procedures.
6. It is proposed that in order to assist in the further development of appropriate arrangements, the County Solicitor be given delegated responsibility to make amendments to the suite of documents, with the exception of the Terms of Reference, Panel Arrangements and Rules of Procedure, subject to consultation with the Chairman and Deputy Chairman of the Panel.

Complaints against the Police and Crime Commissioner

7. At its meeting on 20 December 2012, the Panel delegated responsibility to the County Solicitor to 'produce such further procedures, notes of guidance and forms as may be helpful to assist in the operational process and provision of information to complainants'.
8. The procedures and notes of guidance are attached and fall into three sections: a general note about arrangements for handling complaints, the procedures to be followed on such complaints and a 'quick guide' for the benefit of complainants. The procedures follow the relevant regulations and much of the wording is drawn from those regulations. Copies have been sent to the Office of the Police and Crime Commissioner (OPCC) and the Independent Police Complaints Commission (IPCC). The Policy and Engagement Manager of the IPCC responded, saying "I have read your guidance with interest and I think it's excellent!". No comments have been received from the OPCC. The Panel is asked to comment on the procedures and notes of guidance.

Members' Code of Conduct and Declarations of Interest

9. The Rules of Procedure relating to Conduct of Meetings make it clear that elected members drawn from different local authorities to serve on the Panel

will be the subject of the Code of Conduct and related procedures in place at their respective authorities. The Leicestershire County Council revised its Code of Conduct at the Council meeting in March 2013 and a number of District Councils may choose to adopt that Code of Conduct. However, the position will remain that not all members of the Panel will be subject to the same Code.

10. In these circumstances and given that any decision on declarations of interests is a matter for the individual member, it would not be appropriate for the County Solicitor to give advice on how membership of various bodies should be treated in all cases. What follows is therefore a statement of what could be regarded as appropriate general principles to facilitate discussion and some common understanding as between the members of the Panel.
11. The legislation contains no provisions relating to this issue. The constitution of the Panel establishes the expectation that each relevant local authority in the Police area will nominate a person to be a member of the Panel. That person is therefore a member of the Panel by virtue of being a member of the particular local authority and will be expected to represent the interests of their Council area. In these circumstances it is not necessary for any declaration to be made to that effect.
12. Community Safety Partnerships have been established to promote the interests of the particular areas and membership of those partnerships flows from membership of the relevant local authority. Any member of the Police and Crime Panel who is also a member of a Community Safety Partnership would not on the basis of this analysis be expected to make a declaration to that effect; however, the secretariat will maintain a note of that membership in the event that any queries are raised.
13. Members of the Panel may also undertake responsibilities for the community in other ways, for example through membership of the Probation Board or the Leicester Council of Faiths. In these circumstances, the member concerned may feel it appropriate to declare a personal interest. That in itself would not normally prevent a member from taking part in the meeting. Although terminology will vary from one authority to another, there is a recognition in a number of Codes of Conduct that there will be occasions where a member with a personal interest should not take part in the debate. In many Codes, there is a judgement of "common sense"; for example, in the Code of the County Council, the definition of such an interest is: "One which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest". This is the sort of test which is familiar to members based upon their experience.

Strategic Partnership Board (SPB)

14. The SPB operates as a consultative partnership body. It does not have the executive power to require the constituent organisations to commit their resources in a particular way or to commit to a particular initiative or plan.

The members of the SPB represent their local authorities and do not have delegated executive powers to make such decisions but, if consensus is reached on a way forward, are expected to use their best endeavours to obtain the commitment of their authorities.

15. Members attend the Panel on behalf of their constituent authorities. If a matter under discussion has not been raised at the SPB, no conflict arises. If it has, then the member should represent the views of his/her authority. If those correspond with the agreement reached at the SPB, then again no conflict arises. If they do not, then the obligation of the member remains as above, to represent the view of his/her authority and that matter will have to be further discussed or resolved at the SPB.
16. In all of these circumstances, the position of a member of the Police and Crime Panel who is also on the SPB appears to be no different from that of membership of the Community Safety Partnership, i.e. in both cases membership of both bodies is a consequence of membership of the relevant Council with the consequence that no declaration would be required.
17. However, the secretariat will maintain a note of members' involvement in the SPB, in the event of any query being made.

Independent Members

18. Independent members are not elected members of a local authority and therefore not subject to the application of a Code of Conduct for that reason. However, it is clearly appropriate that the principles of behaviour in public life do apply to those persons as members of the Panel. Whilst the Panel is independent of the County Council, it would appear appropriate for the County Council Code to apply in the same way as that Code applies to co-opted members on County Council committees. The Panel is asked to agree to this proposal and note that, if agreed, Independent Members will receive training on the application of that Code.

The Joint Audit Risk and Assurance Panel (JARAP): Police and Crime Commissioner and Chief Constable

19. The above Panel has been established in light of the principles of good governance laid down by the Chartered Institute of Public Finance and Accountability (CIPFA) and the financial management code of practice for the police service of England and Wales. The view has been taken that the Office of the Police and Crime Commissioner and the Chief Constable are intrinsically linked by the priorities of the Public and Crime Plan and therefore it is in the best interests of the public, value for money and probity that the JARAP is established.
20. The purpose of the JARAP is defined in its terms of reference as being:-

“To provide independent assurance of the adequacy of the following –

- The risk management and the internal framework operated by the PCC and Chief Constable
 - The effectiveness of their respective governance arrangements
 - Appointment, support and keep under review the work of internal and external auditors as they provide assurance on risk management, internal controls and the annual accounts through their work
 - Financial and non-financial performance to the extent that it affects the PCC and the Chief Constable's exposure to risk, weakens the control environment and undermines their ability to provide good value for money.
 - The financial reporting process.”
21. The Terms of Reference further state that: “The JARAP will establish effective communication with... other relevant stakeholders, including the Police and Crime Panel, for the purpose of fulfilling these Terms of Reference. A working protocol will be established to ensure this is achieved by all parties”.
22. The JARAP will have a chair, deputy chair and three other members, all of whom must be independent of the PCC, the Chief Constable and Police and Crime Panel.
23. The responsibilities of the JARAP include obtaining assurance in connection with the adequacy of relevant statements including the Annual Governance Statement and the Head of Internal Audit's Annual Report. The Chair of the JARAP will be responsible for producing an annual report to coincide with the Annual Governance Statement.
24. The relationship between the JARAP and the Police and Crime Panel requires some further consideration. Both the Panel and the JARAP have responsibilities in relationship to the delivery and development of the Police and Crime Plan. The Panel has statutory responsibilities in relation to the preparation of the Plan and any variation to it and may wish to consider whether to scrutinise the delivery of particular priorities within the Plan and to provide support to the PCC in the development of an appropriate response to priorities arising from it. The Terms of Reference of the JARAP state that “it will obtain assurance in connection with... the establishment and maintenance of an effective system of risk management, integrated governance and internal control... that supports the achievement of the objectives of the Police and Crime Plan, ensuring probity, value for money and good governance”. Whilst the JARAP may be concerned for the integrity and effectiveness of the operation of the system as a whole, members of the Panel will wish to bring their experience of the areas they represent and its people to bear upon such discussion and may wish to focus attention on particular areas.
25. Whilst therefore the approach may be different, there is a risk of some overlap or duplication of effort as between the two bodies. It would be appropriate for this to be managed carefully, not only to avoid duplication of effort but also to

reduce the risk of expectations being placed upon the PCC which are inconsistent.

26. The Panel is asked to agree that the County Solicitor be authorised to undertake further discussions with the officers supporting the JARAP with a view to developing appropriate arrangements for liaison over work plans and decision-making processes, sharing of information and consultation so that the views of one body are appropriately fed into the decision-making processes of the other, to avoid unnecessary duplication and ensure that work programmes are, so far as is appropriate, complimentary.

Recommendations

27. The Panel is requested to:-
- (a) agree that the County Solicitor be given authority in consultation with the Chairman and Deputy Chairman of the Panel to make amendments to Guidance on conducting Confirmation Hearings, Protocols for working with other authorities and procedures relating to complaints against the Police and Crime Commissioner;
 - (b) note the general principles relating to Codes of Conduct for elected members and declarations of interest as a starting point to assist members on these issues;
 - (c) agree that the Leicestershire County Council Code of Conduct apply to the independent members of the Panel;
 - (d) agree that the County Solicitor undertake further discussions to develop appropriate arrangements for liaison, sharing of information and consultation with the Joint Audit Risk and Assurance Panel for the Police and Crime Commissioner and Chief Constable.

Officer to contact

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Appendix

Appendix A – Procedures and processes for Complaints against the Police and Crime Commissioner