

PFCC Decision Report

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| Report reference number: 117/2019 |
| Classification Not protectively marked |
| Title of report: PFCC Constitution (Policing) |
| Area of county / stakeholders affected: Whole of Essex |
| Report by: Pippa Brent-Isherwood (Chief Executive and Monitoring Officer) Date of report: 31 July 2019 Enquiries to: Pippa Brent-Isherwood (Chief Executive and Monitoring Officer) |

1. Purpose of the report

To approve and adopt the PFCC's updated Constitution in respect of policing, attached at Appendix 1.

2. Recommendations

That the Police, Fire and Crime Commissioner approves and adopts the updated Constitution in respect of policing attached at Appendix 1.

3. Benefits of the proposal

The Constitution adopted in 2016 has been reviewed and updated to ensure its continued compliance with legislation and regulations relevant to the Commissioner's activities with regard to policing.

4. Background and proposal

For ease of reference, the updates to the Constitution deal principally with the following matters:

- The PFCC's term of office (subsection 1.5)
- The powers, functions and duties of the PFCC (subsection 3.2)
- The PFCC's duties when carrying out their functions (subsection 3.13)
- Use of the Police Fund (subsection 4.1)
- The minimum budget for the PFCC (subsection 4.2)
- Grants payable to the PFCC (subsections 4.4 – 4.4.3)

- The procedure to be followed with regard to the setting of precepts (subsections 4.6 – 4.6.1)
- The responsibilities of the Section 151 Officer with regard to reporting on the robustness of budget calculations and in the event that it appears to them that the PFCC, a committee on which the PFCC is represented, a person employed by the PFCC or a member of the Essex Police force has or is likely to commit the PFCC to expenditure that is unlawful or exceeds the resources available to meet that expenditure (subsections 4.7 and 4.9)
- The PFCC's ability to fund local youth justice services (subsection 4.8)
- The PFCC's powers and duties with regard to collaboration agreements (subsections 4.10 – 4.10.2)
- The handling of complaints and conduct matters relating to the PFCC and Deputy PFCC (subsection 5.4) and to police staff and the Chief Constable (subsections 5.5 – 5.5.26)
- The functions of the Essex Police, Fire and Crime Panel (subsection 6.1), including its power to require attendance and information (subsection 6.2) and to suspend the PFCC (subsection 6.3)
- The procedure to be followed to appoint an acting commissioner in the event of the office of PFCC being vacated or the PFCC being incapacitated or suspended (subsection 7.3)
- The grounds on which a person is disqualified from election or holding office as PFCC (subsections 7.5 – 7.7)
- The Panel's role in appointing to senior vacancies within the Police, Fire and Crime Commissioner's staff (subsection 8.3), including the role of the Deputy Police, Fire and Crime Commissioner (subsection 8.4)
- The functions of the PFCC's Monitoring Officer (subsection 8.7)
- Disqualification and political restriction of staff of the PFCC (subsection 8.11)
- The appointment, suspension and removal of the Chief Constable (8.13.1 – 8.13.2)
- The appointment of Deputy Chief Constables and Assistant Chief Constables (subsection 8.13.3)
- Remuneration of the PFCC (subsection 9.1)
- Incidental powers held by the PFCC (subsection 9.3)
- Provision of information by the Chief Constable to the PFCC (subsection 9.9)

The supporting Schedules to the Constitution, including the Information Sharing Agreements between the PFCC and the Police, Fire and Crime Panel and Essex Police, as well as the Schemes of Delegation and Consent and the Code of Conduct, have also been reviewed and refreshed as necessary. Schedule 4 has been replaced with a revised Financial Management Code of Practice released in 2018. The revised Schedules also include the Terms of Reference for the PFCC's Performance and Resources and Strategic Boards, which were updated in June and September respectively, along with the PFCC's Financial Regulations and Contract Standing Orders, which were updated in July 2018. Schedule 14 (the joint PFCC / Essex Police Anti-Fraud & Bribery Policy) has been replaced by an updated version agreed by the Joint Audit Committee in March 2019 and Schedule 15 (Policies and Strategies of the PFCC) has been updated following the review of internal policies and strategies undertaken in 2018/19. Finally, the updated Terms of Reference for the Essex Emergency Services Collaboration Strategic Governance Board agreed at its meeting on 5 July 2019 have been included as Appendix 4 to the Constitution, as agreed via decision report 104/19.

It should be noted that the Constitution attached at Appendix 1 only governs the Commissioner's activities with regard to policing. A separate Constitution governs the Commissioner's activities as the Fire and Rescue Authority. This document is also in the process of being reviewed and updated and a revised version will be recommended for adoption in due course through a separate decision report.

5. Alternative options considered and rejected

The Constitution adopted in 2016 includes a commitment to undertake a review of the document no less than annually. There is also a requirement to ensure that the provisions of the Commissioner's Constitution are consistent with legislation and statutory guidance that has come into effect since the current Constitution was adopted, including the Policing and Crime Act 2017, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). There is therefore no alternative but to review and update the Constitution accordingly.

6. Police and Crime Plan

The Constitution is a key document setting out the governance framework through which the Commissioner will ensure the delivery of the Police and Crime Plan.

7. Police operational implications

There are no new operational implications for the Essex Police force arising from this decision. The Chief Constable has been consulted on, and his views reflected in, the document attached at Appendix 1.

8. Financial implications

There are no new financial implications arising directly out of this decision.

As set out above, the Constitution includes sections on the use of the Police Fund; the minimum budget for the PFCC; grants payable to and by the PFCC; the procedure to be followed with regard to the setting of precepts, and the responsibilities of the Section 151 Officer.

9. Legal implications

The Constitution adopted in 2016 has been reviewed and updated to ensure its continued compliance with the following:

- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- The Police Reform Act 2002
- The Police Reform and Social Responsibility Act 2011
- The Policing Protocol 2011
- The Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012
- The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012
- Policing and Crime Act 2017

- Data Protection Act 2018
- General Data Protection Regulation (GDPR)

Legal advice has been taken, both from Essex Police's Monitoring Officer and externally, and such advice reflected in the document attached at Appendix 1.

New regulations and Independent Office for Police Conduct (IOPC) Guidelines relating to the handling of complaints against police forces are expected to be introduced in December 2019. Any changes resulting from these will be reflected in the next review of the Constitution thereafter.

10. Staffing implications

There are no new staffing implications arising from this decision.

As set out above, the Constitution clarifies the role of the Police, Fire and Crime Panel in appointing to senior vacancies within the PFCC's staff, as well as the political restriction of the PFCC's staff (except for the Deputy Police, Fire and Crime Commissioner). It also sets out the processes to be followed to appoint the Chief Constable, Deputy Chief Constable and Assistant Chief Constables, and also to suspend or remove the Chief Constable.

11. Equality and Diversity implications

There are no equality and diversity implications arising from this decision.

12. Risks

There are no risks identified as a result of approving the updated Constitution attached at Appendix 1.

Failure to approve the updated Constitution, however, would create the risk of the Commissioner's Constitution being non-compliant with the current legislative framework.

13. Governance Boards

The Police, Fire and Crime Panel was consulted on the document at its meeting on 6 December 2018.

14. Background papers

Appendix 1 – Police, Fire and Crime Commissioner for Essex Constitution

Report Approval

The report will be signed off by the OPFCC Chief Executive and Treasurer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O.

Sign: [Signature].....

Print: P. GANT-SHEENKIN.....

Date: 31 July 2019.....

Chief Finance Officer / Treasurer

Sign: [Signature].....

Print: ABEEN GOGH.....

Date: 20/09/2019.....

Publication

Is the report for publication?

YES

NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

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N/A.....

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

Redaction

If the report is for publication, is redaction required:

1. Of Decision Sheet? YES
NO

2. Of Appendix? YES
NO

If 'YES', please provide details of required redaction:

.....
N/A.....

Date redaction carried out:

Treasurer / Chief Executive Sign Off – for Redactions only

If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.

Sign:

Print:

Chief Executive/Treasurer

Decision and Final Sign Off

I agree the recommendations to this report:

Sign: 

Print: *R.C. Hirst*

PFCC/Deputy PFCC

Date signed: *25/5/19*

I do not agree the recommendations to this report because:

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Sign:

Print:

PFCC/Deputy PFCC

Date signed: