

Police and crime panels

A guide to scrutiny





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Introduction

Police and crime panels (referred to as Panels in this guidance), will from November 2012 be responsible for supporting, and scrutinising the police and crime commissioner (referred to as the PCC, in this guidance)¹ in each police force area in England and Wales. Panels will be scrutiny bodies with a range of statutory duties, and the responsibility for scrutinising² and supporting³ the PCC's activities over a range of policy areas.

The role of panels, and the work carried out by local authority overview and scrutiny committees that oversee community safety partnerships (CSPs), will inevitably cover some of the same ground, and there will be some areas of potential synergy which is explored in this advice.

Ensuring the panel provides effective scrutiny of the PCC could be a challenge given the limited resources available to fund panels even where a panel limits itself to carrying out just the functions provided for in legislation. This is explored in the section below, on “supporting set-piece events”. In this guidance, we use the term “set piece events” as shorthand for the formal, statutory functions of the panel that must be conducted “in committee”, which we set out in more detail below.

This guidance is intended to assist in the planning and operation of panels established by local authorities (Part 2 panels)⁴. Those established by the Secretary of State (Part 3 panels) have identical powers but may operate differently. Care would therefore be needed in applying this guidance in relation to Part 3 panels.

All references in this guidance to ‘the Act’ relate to the Police Reform and Social Responsibility Act 2011.

Text note

This guidance has been drafted by CfPS and LGA and as such reflects their views on the recent policy and legislative developments in relation to police and crime panels. It is not a reflection of the views of the Government or of civil servants at the Home Office who will be issuing official guidance on police and crime panels in due course. As far as is possible the following advice has been drafted so as to complement official guidance.

¹ Local Government Association/Centre for Public Scrutiny. (2011) Police and crime panels: guidance on role and composition, para 3.1, p7; see also subtitle preceding section 28 of the Act, and s28(6).

² s28(3) onwards

³ s28(2)

⁴ Under Schedule 6 of the Act a Part 2 panel operates as a local government joint committee set up by the councils in the force area. Under Part 3 the Home Office establishes the panel. All Welsh panels will be Part 3 panels.

The local accountability landscape

Different bodies involved

There are a number of different bodies carrying out a range of roles in local accountability around policing and community safety, reflecting the different and overlapping structures that have grown up. As crime and disorder are best tackled by multi-agency partnerships it is important these bodies are brought together. This is recognised in s10 of the Act, which refers to the need for the PCC to work in partnership with other agencies, and people, to deliver his or her priorities.

The panel will also need to understand that to carry out its scrutiny role, it too will need to work in partnership with others including the PCC and other relevant bodies and organisations that deal with police and crime matters locally and may work with the PCC. Principally, this will be community safety partners (CSPs), which might receive funding from their PCC after April 2013.



Overview and scrutiny committees

CSPs are scrutinised by crime and disorder overview and scrutiny committees. Under the 2006 Police and Justice Act, councils are under an obligation to allocate this function to one of their committees⁵. The work they carry out is an important part of the landscape and the outcomes from their scrutiny should be shared, and passed between relevant bodies (particularly where matters of concern arise). This should help to make sure that scrutiny happens in the right place, at the right time and involves the right people.

The panel should have a good overview of how resources might be effectively spent locally by CSP partners and others. Good links with CSP scrutiny committees of local authorities will help the panel advise the PCC accordingly. This is further explored later in this guidance.

Other scrutiny bodies

Scrutiny and accountability will be exerted in other ways too. Her Majesty's Inspectorate of Constabularies (HMIC) has an inspection role to which the panel will need to have regard, in considering how the PCC addresses potential performance concerns within the local force. The local press, and the public, will also seek to exert influence, sometimes through consultation processes operated by the PCC or the local force.

⁵ This is a power that relates to the partnership as a whole rather than the individual partners. However, it should be noted that, through other mechanisms, scrutiny applies to some of these partners individually (local authorities and NHS bodies, for example).

As part of the landscape, there may also need to be links with local authorities' health scrutiny powers under the Health and Social Care Act 2012, given that joint or co-commissioning between the PCC and directors of public health may prove important both in reducing re-offending, and with early intervention on various matters relating to criminal justice and community safety.

Such areas will provide further opportunities for the panel to work together with local authority scrutiny functions. Additionally panels may need to consider how they work with other panels given the joint working and collaboration already existing between forces and the desire by the government for this to increase.

All these different engagement and scrutiny mechanisms form a part of what CfPS refers to as a 'web of accountability'.⁶

Within this landscape it will be important for the panel to remember its own specific role – that of holding the PCC to account. It will need to work with these other people, agencies and organisations to make sure that its work complements, rather than duplicates, their own.

Policing protocol

The Home Office has produced a national protocol to define the relationship between the PCC, the panel and the chief constable, which emphasises these issues⁷. In brief, the protocol affirms that:

- the PCC will have responsibility for setting the 'strategic direction and objectives of the force', and monitoring performance including against the priorities in the police and crime plan
- the PCC will be responsible for holding the chief constable to account (but not fettering the chief constable's operational independence, or that of the force)
- the PCC will provide the 'local link' between the police and the public, working to 'translate the legitimate desires and aspirations of the public into action'
- the PCC must comply with all formal requests from the panel to attend their meetings
- the PCC must prepare and issue an annual report to the panel on delivery against the objectives in the police and crime plan
- the PCC has wider responsibilities as well – making crime and disorder reduction grants, delivery of community safety, enhancement of the delivery of criminal justice in the area and bringing together CSPs at force level, and, importantly, the 'ability to enter into collaboration agreements between other PCCs and force'.

6 Centre for Public Scrutiny (2010) Accountability works

7 Policing Protocol Order 2011 (SI No. 2744)

The panel's role in the accountability landscape sits within this framework. The protocol, like the legislation, makes clear that it is not the responsibility of the panel to scrutinise the chief constable, but instead the way that the PCC exercises his or her statutory function of providing strategic direction in local policing. This separation is fundamental to policing governance.

Participants in the process may wish to supplement the protocol with more practical detail about how accountability will be exercised, in doing so including the scrutiny arrangements for CSPs, and health, in the area as well. Some force areas are planning to prepare a 'memorandum of understanding' to ensure that shared expectations between the PCC, and other partners, are promoted. Where such memoranda are proposed, the role of panels should be considered. Where shadow panels are in operation the members of those panels should be involved in the production of memoranda.



Panel links with overview and scrutiny

Under the Police and Justice Act 2006, local authorities must scrutinise their area's community safety partnership (CSP). Under the 2006 Act they are only able to hold the partnership as a whole to account, rather than the individual partners. However councils can scrutinise some of the individual bodies, such as the NHS, within the partnership through other scrutiny legislation. These powers of scrutiny will remain under the new arrangements for policing, and as such CSP scrutiny and the panel will need to work to avoid duplication in their work.

The PCC will not be a 'responsible authority' for the purposes of community safety partnerships. We have, however, noted above that PCCs will have the power to make grants to CSPs, and so there is the potential for CSP scrutiny to cut across areas of the panel's responsibility.

To avoid duplication, CSP scrutiny and the panel should therefore work together in:

- Identifying issues of mutual interest and concern and selecting the best forum to investigate those issues. It may even be worthwhile under certain circumstances to consider joint panel/CSP scrutiny investigations into certain issues. This reflects the concept of 'layered scrutiny' that CfPS has developed for use in relation to health scrutiny⁸.

⁸ Centre for Public Scrutiny. (2012) Health scrutiny: exploiting opportunities at a time of change

- Ensuring that the panel is plugged in to local-level issues within the force area, which will be impacted by PCC decision-making. The panel will need some means to connect their work down to neighbourhood level. CSP scrutiny provides them with a means to do this.
- Sharing evidence. Joint working will mean a better use of resources, as the panel is able to draw on evidence collected by CSP scrutiny, and vice versa.

Where the panel includes non-executive councillors, some may also sit on CSP scrutiny committees, making joint working between the two more straightforward. Where the panel is composed predominantly or entirely by executive-side members, the authorities in the force area will need to identify ways – relevant to each area – to achieve effective liaison between the panel and CSP scrutiny committees. This could involve CSP scrutiny committees being brought into local protocols or memoranda of understanding between the PCC and key partners.

Potential conflict of interest

Where panels include councillors who sit on CSPs, there could be a conflict of interest which might arise where particular items of business relate to actual or potential funded work carried out by CSPs on behalf of the PCC. Where CSPs have a provider/funder relationship with the PCC, it may be difficult for them to effectively scrutinise the PCC's work.

Assuming that the panel will be subject to the same rules on interests as other local government committees, such a conflict will relate not to a personal or prejudicial interest, but it does relate to conflicting roles carried out by the councillor in question owing to their official position. As such, there is no legal bar on such councillors sitting on panels, or participating in discussions where such conflicts may arise. However, monitoring officers and councillors themselves should be aware of the risks that may arise when the panel's composition makes such circumstances likely to occur, and to recur.



Work programming

Set piece events for statutory functions

The panel has certain statutory functions, set out in the Police Reform and Social Responsibility Act. Each newly established panel will need to focus on these ongoing key functions:

- reviewing the police and crime plan⁹
- reviewing the PCC's annual report¹⁰
- reviewing the policing precept¹¹;
- carrying out confirmation hearings for certain senior appointments (on which separate guidance is available)¹²
- carrying out confirmation hearings for the chief constable (on which separate guidance is available)¹³
- investigating complaints about non-criminal behaviour of the PCC¹⁴.

Some of these functions are specified as 'special' functions, which cannot be delegated to a sub-committee of the panel¹⁵.

Parts of this guidance refer to such "special" functions as 'set-piece events', to highlight the fact that they will be carried out by the panel, in the context of a formal committee meeting, often requiring fairly substantial prior preparation, and usually the attendance of the PCC.

There are wider duties in the Act for the panel to make reports and recommendations on matters relating to the PCC¹⁶, and to carry out investigations into decisions made by the PCC¹⁷.

In order to carry out its statutory functions, the panel will need to have a good understanding of policing priorities and community safety issues in the area. It will not be possible for the panel to acquire this understanding solely by carrying out its 'special functions'; it will need to carry out additional work, and investigations as well.

Additional work

Additional work, complementing the set-piece events being carried out to deliver the statutory functions above, will be necessary to help the panel support to the PCC. It is suggested that both areas of activity should be regarded as integrated facets of the panel's operations.

9 s28(3)

10 s28(4)

11 Schedule 5

12 Schedule 1, Paragraphs 10 and 11

13 Schedule 8

14 Schedule 7, paragraph 3(2)(b)

15 Schedule 6, paragraph 27(1). See also R&C, paragraph 5.21

16 s28(6)(b)

17 s28(6)(a)

The panel will not be able to carry out its statutory responsibilities without having a detailed understanding of a range of issues connected to policing and crime in the local area. Some panel members may have knowledge relevant to their own areas already; for example, by being a cabinet member with a portfolio including community safety, or being the chair of an overview and scrutiny committee with responsibility for looking at community safety issues.

However, other than councillors who have previously served on police authorities it is unlikely members of the panel will have the general, strategic overview of policing issues within the force area that will be vital to carrying out the scrutiny role.

One way that members of the panel could get a strategic overview would be to carry out work in-year that goes beyond the panel's 'statutory duties'. This would enable members build up their knowledge of complex, cross-cutting issues, in a way that would be difficult to achieve through either a report submitted by the PCC, or background research carried out by an officer. A panel attempting to operate on this basis would then be better placed to carry out effective scrutiny.

In-year work, such as task groups, will therefore need to be considered as supportive and complementary of, rather than supplementary to, these set-piece events. This is why we believe it may be difficult to effectively scrutinise the PCC where the panel only carries out its 'statutory functions'.

However, it is important that such work is not planned and delivered in such a way that seeks to set the panel's role as a local government 'partnership board', making decisions jointly with the PCC like a 'mini-police authority'.

The panel should instead act as a critical friend; a supportive, but independent, voice seeking to investigate the PCC in the interests of recommending – not directing, or seeking to co-ordinate – changes and improvements.

This demarcation is explained in more detail below.

Comprehensive work programming

Like overview and scrutiny committees in local government, as a scrutiny body the panel will need to develop a work programme to guide its work in holding scrutinising and supporting, the PCC, encompassing both the 'set piece' events we discussed above, and its wider, additional work (hence, 'comprehensive' work programming).

Scrutiny committees in local government usually put together a relatively detailed work programme at the beginning of every municipal year. In a recent publication on this subject¹⁸, CfPS suggested that, alongside such an annual process, an in-year flexible approach to the work programme would need to be adopted, to ensure that a given committee remains responsive to events.

18 Centre for Public Scrutiny. (2012) A cunning plan

Proper work programming will enable the panel to manage its time and resources effectively. It will allow it to prepare for its set-piece, statutory functions by identifying and scheduling other work such as task group activity and research. As has already been suggested, such work will be invaluable in terms of informing the panel's statutory work, and making the panel effective.

Given that the panel is an independent joint committee, work programming will also be important for the following reasons:

- it will ensure that the panel keeps to strategic issues, and links up to PCC activities
- it will provide the PCC with a level of certainty and assurance, as he or she will know which issues the panel will be likely to investigate, how and when
- it will allow the panel to manage its own resources more effectively
- it is sensible in the interests of openness and transparency to be able to demonstrate what the panel is likely to be doing, to allow others to engage in that process
- it will make it easier for the panel and other scrutiny bodies (such as CSP scrutiny, as discussed in the section above) to work together, minimising the duplication of work.

The work programme will need to be properly managed, by the chair of the panel. For matters which arise during the year, the chair will (as is standard practice in local government) decide whether topics raised for discussion by members of the panel, and others, should go on the agenda. These decisions should be clear and transparent.

For example, the chair might use the following considerations to help decide whether a given issue is worth discussing:

- would the suggested item contribute to informing public debate on an issue?
- or could the debate lead to recommendations to the PCC about actions that would lead to tangible improvements to services?

Towards the beginning of the next municipal year a more formal process would be needed to decide on the dates and main substantive items for committee meetings, and the possible topics of more in-depth reviews. Local scheduling of discussions and local engagement on the police and crime plan, and the PCC's annual report, will help the panel to come to a judgment on its work programme.

At the outset the panel should communicate with the PCC to find out if there are any particular areas where assistance and support in policy development might be required. The PCC should then be consulted about the draft work programme. Where the panel is carrying out work that the PCC has suggested, this should be carried out in an independent and constructively critical manner.

Different methodologies

There will be a number of different ways for the panel to carry out its scrutiny work. The two main techniques will be to use **formal committee meetings**, and to use informal **task and finish groups**. Both methodologies are (or should be) interlinked and are explored further in the rest of this document.

Scrutiny by formal committee meetings

Public involvement

Some scrutiny will be carried out 'in committee'. This will provide an opportunity for the panel to receive written evidence in the form of a report (usually a report from the PCC), or sometimes to receive oral evidence from the PCC or their staff.

Because committee meetings must be held in public, they provide good opportunities for public engagement. While some meetings may be treated as 'business' meetings – with members receiving and discussing technical reports, for example on performance – from time to time it will be appropriate for meetings of the panel to be more obviously public-facing.

These kind of meetings might be held away from their traditional formal setting to encourage members of the public to play an active part, either through making comments, directly questioning witnesses on certain points or giving their own personal reflections on issues of local concern. These might be particularly useful in the consideration of the police and crime plan and/or the PCC's annual report. Public engagement activities carried out by the panel should always be arranged and planned in consultation with the PCC, who has a wider statutory responsibility to engage with the public.

Inviting witnesses

Under the Act, the panel has the power to call in the PCC, and the PCC's staff, to give evidence at panel meetings, and to invite the chief constable to give evidence¹⁹. Other than the PCC and his/her staff, the panel cannot require any other person to attend to give evidence. This reflects the fact that the panel exists to scrutinise and support the PCC, not the police or any other person or body.

The panel will be a joint committee of two or more councils²⁰, but the Home Office have stated that it will not be a joint committee for the purposes of the Local Government Act 1972. They plan to introduce regulations in autumn 2012 which will set out the extent to which existing local government legislation will apply to them. LGA and CfPS assume that it will.

As such, it is expected that (in line with other forms of joint committee) the panel has the power to call in other witnesses too. However, others should be invited to give evidence only where their evidence is required to assist in the scrutiny of the PCC.

¹⁹ s29

²⁰ Schedule 6, paragraph 4(5) (for Part 2 panels). Under paragraph 13(5), Part 3 authorities (including Welsh authorities) will not be local authority committees but the provisions of the 1972 Act relating to local authority committees are likely to still apply to them. See the forthcoming Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012

While it may be appropriate, in the course of an in-depth investigation (see below) to draw in evidence from a wide range of people in order to more effectively hold the PCC to account, care should be exercised when such evidence is to be taken from other partners formally, at the panel itself, for fear of the perception developing that the panel is purporting to hold those partners to account rather than the PCC.

A partner therefore might be asked to give evidence on:

- how they are helping the PCC to secure his or her strategic priorities
- how work that they are planning, or delivering, might impact (positively or negatively) on the PCC's performance
- how decisions they are making, or plan to make, on resources may impact upon future iterations of the police and crime plan, and future police precept figures
- how, if they are CSP responsible authorities, they are delivering on funding agreements made with the PCC.

In engaging with CSP partners, and with health bodies, the panel will need to work closely with committees (crime and disorder overview and scrutiny committees, and health scrutiny committees²¹) in individual local authorities that have the power to hold those partners to account.

²¹ Or whatever committees at local level are designated by the authority concerned to carry out those duties, in authorities operating under committee system arrangements

Planning formal meetings

A panel meeting formally four times a year will probably wish to use each meeting for a 'set piece' session with the PCC.

Each set piece session – whether it is considering a general policy matter, a specific performance issue, or one of the panel's statutory functions – will need to be considered in the light of the need for the panel both to make substantive recommendations on issues, and by so doing add tangible value to the delivery of the PCC's policies across the force area. This notion of adding value must be central to all the panel's activities.

It is assumed in each of the below sections that there will be occasions where it is more appropriate for the PCC's staff to attend either alongside, or instead of, the PCC.

Attendance by the PCC

PCC attendance on a substantive policy issue:

The panel may wish the PCC to speak to them about a substantive policy issues, such as:

- the prevalence of a particular crime across the force area
- the PCC's specific priorities under one or more aspects of the agreed police and crime plan
- the way that the PCC is, or is not, working together with partners to deliver a particular policy.

Members will have to be careful that discussion, particularly on the prevalence of particular crimes, focuses on the PCC's strategic response to these issues. Strategic and operational issues may overlap, but this on its own does not provide justification to 'keep the panel away' from policy issues in which they should be rightly interested. We discuss what 'operational' might mean in the section below.

PCC attendance on a performance issue

Throughout the year the panel will need to be kept updated on the PCC's performance in achieving his or her priorities under the police and crime plan. Not to do so would mean that they will be ill-prepared to properly consider the PCC's annual report at the end of the year.

The PCC will want, and need, to put in place a performance management system to ensure that the force is delivering against the police and crime plan. As part of the design of this process, the PCC and the panel could assess together the robustness of such a framework to ensure that it is fit for purpose, and will allow the panel to conduct effective scrutiny of the PCC. The force will also be subject to periodic inspections by Her Majesty's Inspectorate of Constabularies (HMIC), and the force will be obliged to publish crime data as well.

It makes most sense for performance information to be provided to members of the panel outside meetings, and for particular areas of concern to be selected by the chair for further scrutiny 'by exception'²². By doing this, the panel will be able to focus its attention on those performance issues where it can really add value, rather than carrying out superficial examination of a broad sweep of management data. Working in this way will ensure that PCC attendance to discuss performance issues will be targeted, that the PCC can prepare in advance and that substantive recommendations can come out of the session.

PCC attendance to present the annual report

The PCC and the panel may wish to work together to co-develop the annual report, to ensure that it is a robust document that can be actively used for improvement purposes.

A set-piece event should come at the end of this process, rather than being the first time that the panel sees the PCC's report.

A good session dealing with the annual report will use the report as a tool to carry out an 'annual review' of the PCC's activities, looking back at the last year, its successes and failures, and forward to the next year. The report presented at the set-piece event (in, say, March) would have enough detail in it to allow the panel to have a detailed discussion on the 'state of the force' and the state of the area.

22 See Centre for Public Scrutiny, (2010) Green Light

A less beneficial session would involve the panel highlighting apparent factual inaccuracies in the report, asking for additional narrative information on particular parts of it, or, even worse, suggesting typographical or grammatical amendments to the text. None of these things would add value to the effective scrutiny of the PCC and all of them would represent a poor use of time for everyone involved.

Consequently, the success or failure of a set-piece session looking at the PCC's annual report will very much depend on the quality of the annual report itself.

PCC attendance to discuss the policing precept

The panel has a veto over the policing precept and, as such, scrutiny of it will have to be carefully planned, and carried out in a fair and transparent manner.

The rate of the precept will be based on the priorities set out in the police and crime plan (see below). The panel will probably need to see evidence that backs up the proposed precept and, as such, it will make sense for the PCC to engage with the panel about this issue perhaps several times before the meeting.

The PCC should be invited to attend a meeting (usually a formal meeting of the panel) at which the precept is to be discussed before the final figure is formally put to the panel. Such a discussion might be carried out when a draft version of the police and crime plan is considered, or as part of a discussion about another substantive policy matter. This will allow the PCC to explore some of the potential options for the precept before a definitive proposal is put together – minimising the risk that the veto will be used and providing transparency in the policy development process.

The PCC will subsequently attend a meeting where the precept will be formally tabled and where the panel will have the opportunity to use their veto. If the PCC and panel have engaged effectively on this issue beforehand, this formal tabling can be dealt with swiftly and with minimal, if any, substantive discussion (as this discussion will have occurred beforehand). If there are still disagreements, the PCC and panel officers, and the PCC and panel themselves, will have to think carefully about how the meeting will be organised and run in such a way that will allow the panel to make a decision on whether or not to exercise the veto.

The veto will need to be exercised with care. Although regulations have yet to be issued, it could be that those regulations will only permit the veto to be exercised once. On this assumption, once the veto has been used the PCC will have to bring forward a revised precept, but the panel will not have the power of veto over this new figure.

If regulations provide an opportunity for multiple uses of the veto, the PCC and the panel will need, as part of their protocol, to define how this process of 'ping-pong' might work so as to minimise the risk of delay in setting the precept and the issuing of council tax bills.

Consequently, a veto should be accompanied by detailed reasoning, explaining why, in the view of the panel, the precept is not acceptable and suggesting another course of action in the form of recommendations. Such an approach will keep discussions focused on substantive issues, particularly where a veto is being exercised because the panel is unhappy with a specific part of the police and crime plan, delivery of which will impact upon the level of the precept.

PCC attendance to present the police and crime plan

The police and crime plan will set out the PCC's objectives for policing and reducing crime and disorder in the area. Soon after the first election of the PCC in November 2012, a plan will have to be developed. It will remain in place for five years, although the PCC may well wish to amend it every year (and does in fact have the right to fully renew it before the five year deadline). It will set out how policing resources will be allocated, and agreements for funding and reporting on the work (in the form of performance management frameworks). It should be seen in the context of the PCC's annual report (see above), the annual financial accounts and the proposed level of the policing precept.

Formal consultation on the plan will not just be carried out with the panel. A range of other partners will also be involved. In particular, the chief constable must be consulted, as well as local people and victims of crime in the area. The plan will be a key means for the PCC to hold the chief constable of the area to account, but it will also provide a mechanism for the panel to hold the PCC to account – and for the panel to understand how the PCC's priorities impact on other partners.

The panel will therefore need to understand that it sits as part of a wider consultation exercise by the PCC on the content of the plan. Like the annual report (see above), it will be more productive if a set piece session around the police and crime plan is not seen as a 'sign off' for a publication, but instead as an opportunity to talk around some key issues.

It makes sense that the police and crime plan and the PCC's annual report be taken together; the latter to allow the panel to establish performance against expenditure, and the former to allow the panel to examine performance and expenditure projections and make recommendations for improvements, both in terms of measurement and in terms of substantive policy. Being able to look at both documents at the same time (and when such scrutiny will actually add value, rather than coming late to a debate that has already concluded) will be critical to the panel's success.

Attendance by the chief constable

Care will be needed when the chief constable attends a meeting of the panel. The chief constable may attend to assist the panel in its inquiries, and is most likely to be there to assist the PCC in answering the panel's questions. However, the task of the panel is not to hold the chief constable to account. The Home Office protocol suggests that, 'if the panel seeks 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 remains firmly to the PCC and not to the police and crime panel'.

As such, it is not possible for the panel to invite the chief constable to attend if the PCC is not also being invited to attend the same meeting. It will also not be appropriate to ask questions of the chief constable which stray into holding him/her to account on operational policing.

What is an operational matter?

Knowing what is, and what is not, 'operational', will have an effect on the way that panel engage both with the PCC and with the chief constable.

The Home Office protocol provides guidance on what is, and is not, an operational matter. Under section 2 of the Act 'a police force, and the civilian staff of a police force, are under the direction and control of the chief constable of the force'.

That direction and control (ie operational management) 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 PCC
- 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 PCC.

The panel should not ask the chief constable questions on the first three of these points. The last three are slightly more fluid, as they impinge upon the strategic role of the PCC. Where the panel might wish to ask the chief constable questions on the last three issues, this must always be in the context of the strategic direction that the PCC has set.

Examples of less appropriate questions might be:

- Do you think that the strategic objectives in the police and crime plan are sensible?
- Why did you not deploy more officers to deal with the disorder experienced in the city centre at the end of last month?
- Why has the force been focusing so much of its attention on anti-social behaviour at the expense of issues such as domestic violence?

Examples of more appropriate questions would be:

- How has the force taken steps to amend the way it works to better achieve the strategic objectives in the police and crime plan?
- What resources are available to you to deal with unexpected public order demands?
- What will the impact be on the delivery against all the priorities in the police and crime plan of the decision to shift operational resources towards dealing with anti-social behaviour?

As can be demonstrated, often, asking the right question is about semantics, and recognising the fact that the chief constable will often have to defer to the PCC for all but the most straightforward, factually-based questions.

It may under some circumstances be appropriate to share broad questioning themes with the PCC and chief constable before they appear together at a panel meeting to minimise the risk of inappropriate lines of questioning being followed, and to allow the PCC and chief constable time to be fully briefed and to prepare their responses.

As the panel settles into its role, its individual members will become more attuned to where the barriers lie, and asking the right questions at the right time should become a matter of instinct.

Looking at issues together

Above, we have noted three particular set-piece events – consideration of the PCC’s annual report, consideration of the precept and consideration of the police and crime plan – that are closely linked. It could be appropriate to consider all three at the same time. As ever there are pros and cons to this approach.

Pros:

- provides a single, high profile place to tackle strategic issues on force-wide policing
- reduces the risk of duplication between meetings
- minimises the expense in convening separate meetings to consider these issues very close to each other in terms of time (as these documents/plans will mainly be developed in the January – March period).

Cons:

- risks the panel trying to look at too much, too quickly – a single meeting for three complex issues may be too ambitious
- assumes that the precept plans, the police and crime plan and the annual report will all be at a state of readiness, on the day, where the panel can add value to each document, which is unlikely without extremely careful planning
- risks confusing the statutory roles of the panel, particularly the veto over the precept. A meeting looking at all three issues may result in a veto vote being considered as a de facto veto of all three documents, leading to governance confusion.

Scrutiny by task and finish groups

Advantages

The panel will be able to establish sub-committees and informal task and finish groups²³. Members may feel that time-limited task and finish groups – convened to investigate a specific issue, and then dissolved – provide a more proportionate approach to investigations than the establishment of standing sub-committees (for which powers also exist²⁴). Task and finish groups are, like task and finish groups in local government overview and scrutiny, not formally provided for in legislation.

Task and finish groups provide an opportunity to investigate issues in depth, and to make recommendations which can be submitted to decision-makers. Such investigations will be able to help the panel to explore the policy priorities of the PCC and how those priorities will affect delivery of policing and community safety. Gathering and considering such evidence throughout the year should help the panel scrutinise the PCC effectively on the police and crime plan, the annual report, and the precept at its more formal meetings.

When carried out well, they will have the potential to play a complementary, supportive role to the development of the PCC's policies, but at the same time independent and constructively critical where necessary and appropriate. Most of all, they will assure local people that light is being shone on detailed issues around policing that affect them, and steps are being taken to scrutinize the PCC on those issues.

Task and finish groups should be relatively brief, targeted, proportionate and focused.

Contribution to the panel's statutory functions

In the section on "additional work", we highlighted the probability that the panel would need to carry out such work in order to fulfil its duties under the Act. In this section we will explore the practicalities of how this might work.

The panel may, for example, identify the rising level of domestic burglaries as an issue in certain parts of the force area. Assuming that it may have been a PCC priority (set out in the police and crime plan) to significantly reduce the number of such offences, the panel may wish to investigate further. The panel might for example analyse the figures, speak to victims of crime and to others involved in the process.

²³ Local Government Association/Centre for Public Scrutiny. (2011) Police and crime panels: guidance on role and composition, paragraph 5.17, p17

²⁴ Schedule 6, paragraph 25(3) and (4)

This might help tease out the reasons for increases in burglaries and develop recommendations to improve the situation. The panel may also wish to investigate issues that are not currently panel priorities, so as to feed into subsequent scrutiny around the police and crime plan. Task and finish groups can therefore be seen as carrying out work that will support the scrutiny of both the ‘formal’ scrutiny of the police and crime plan, and the PCC’s annual report.

Establishing a task and finish group

A task and finish group should consist, at most, of five or six members. Their number should be selected from members of the panel. Task and finish groups do not have to be politically, or otherwise, proportionate, but some thought should be given to representation. It may be appropriate to co-opt people onto such a group who do not sit on the panel, to provide specific professional or technical expertise, to represent the point of view of a particular sector of the community, or for some other reason.

The number of such people on a task group should not be higher than the number of panel members on the group. It should be noted that if the panel decides to establish a formal sub-committee to carry out a particular piece of work, it may not co-opt non-panel members onto such a committee²⁵. As such, if there is a wish to make use of people who do not sit on the panel, the establishment of an informal task and finish group would be the preferred approach.

²⁵ Schedule 6, paragraph 27(1)

Selecting the membership

The panel will, in many instances, cover a large geographical area and members of the panel may have long distances to travel to attend meetings. They will have other commitments in their home authorities which may make it difficult to commit to attending large numbers of additional sessions. The chair and all members of the panel will therefore need to think carefully about who is nominated to sit on various groups, and whether money will need to be made available either through the allowances scheme²⁶, or some other method, to deal with expenses. Such considerations will also need to be borne in mind when scoping the review.

Scoping individual pieces of work

At the outset it should be checked that the suggested work is compatible with and complements the work programming planning, and hence whether the investigation should be carried out at all. The next step should be to scope the work with members of the task group and the support officer working together to develop an agreed approach to the investigation which will be followed.

²⁶ Schedule 6, paragraph 11

Panel reviews, for logistical reasons (see above) will, most likely, be short, sharp pieces of work. A task group might only meet two or three times to consider evidence, and maybe once more to agree recommendations. As such it will be important that scoping takes account of two main points:

- that the investigation is member led – if members will not meet more than a couple of times and much work will be delegated to the support officer, member oversight over this process will need to be properly planned
- that the times when members of the task group do meet are used effectively.

Gathering evidence

Evidence can be gathered from a wide range of sources, but because task and finish reviews will focus on the role and functions of the PCC, the PCC will probably be the source for a substantial portion of the evidence.

Care will have to be taken, both when scoping a review and when carrying it out, not to place unreasonable demands for information on the PCC and the PCC's staff. Last-minute requests will probably not occur, by the very nature of task and finish working, but the volume of requests will need to be considered. The group will have limited time to consider and analyse evidence and, as such, a focused and directed approach to evidence, rather than an exploratory one, will have to be adopted.

At task and finish group meetings, evidence may be taken in person. No-one (even the PCC) is under any obligation to attend task and finish groups. As such, potential witnesses will need to be sounded out, and the task group will have to demonstrate to them that giving evidence will be a useful and constructive experience. Questioning will need to be inquisitorial, rather than combative.

Evidence can also be taken in writing. This can take a variety of forms. For local government task groups, usually a scrutiny officer will provide to members evidence collected by research; internal policy documents; papers from partners; benchmarking information from other areas; and 'best practice', and so on. This will usually be information that is publicly available, and will often be supplemented by the scrutiny officer's own analysis. This will provide members with the evidence they need to question witnesses at task group meetings, or to formulate findings.

Evidence garnered from other members' own research and other sources – public consultations, for example – can be useful. The panel will often find that a significant amount of information about public perceptions already exists, but there may be instances where the topic demands that a task group conducts its own research.

In these circumstances, gathering evidence through public meetings and targeted surveys and polls can be a good approach. However, it should be noted that the primary responsibility for engaging with the public over policing matters lies with the PCC, and as such any such work should be co-designed with the PCC to ensure that it complements rather than duplicates existing work.

Making recommendations to the PCC, and following them up

The panel has a specific power to make recommendations to the PCC. The particular detail of how the PCC should respond to these recommendations will be subject to local agreement, but, in general, the following principles should apply, based on similar principles around overview and scrutiny in local government: This will apply whether recommendations come from task and finish groups, or from more formal set-piece events at committee.

- the Panel should notify the PCC of any reports and recommendations in writing, making the process for responding to those recommendations clear
- the PCC should respond to the panel's recommendations within two months of being notified of them, unless the panel has agreed to a longer timescale
- this response should set out whether the recommendations are accepted or are rejected
- where a recommendation, or recommendations, is or are rejected, the PCC should provide reasons
- where a recommendation, or recommendations, is or are accepted, the panel should return to the topic at a pre-arranged time (usually six months or a year later) to check that the recommendations have been implemented.

Where a task and finish group comes up with recommendations of its own which relate to an investigation it carries out, these will need to be passed through the panel to be ratified before being submitted to the PCC. However, there may be some sense in liaising with the PCC on the wording of recommendations before they are agreed.

Recommendations should always be 'SMARTER' – that is, specific; measurable; achievable; realistic; timed; evaluated; and reviewed. In this sense, the panel should treat them as targets to which the PCC will be held. It goes without saying that recommendations to the PCC should only relate to issues within his or her power.

It is inherent in the nature of partnership working that the panel may wish to make recommendations that will affect other partners, or that will require those partners to take action. In those circumstances, the panel should still direct those recommendations to the PCC in the context of his or her s10 powers and responsibilities. The panel should not make recommendations directly to other people or agencies, but may consult with them as a matter of courtesy or to ensure that recommendations that might affect the way that they work with the PCC are drafted appropriately.

Resourcing and support

Officer support

£53,000 per year has been made available by the Home Office for the period of this Comprehensive Spending Review to provide support to the police and crime panel.

This has been characterised as the cost of a scrutiny officer²⁷, plus on-costs, but there is no requirement for the money to be spent in a particular way and it is not ringfenced for panel support. Money will be given to the lead authority in each force area.

It will be possible to use this money to, for example:

- 'backfill' democratic services support in the lead authority
- appoint a new scrutiny officer
- backfill support in both the community safety team (to provide policy support to the panel) and in democratic services (to provide administrative support)
- divert the money somewhere else entirely, for other purposes, and support the panel using existing resources.

We would, however, strongly recommend that the money be used for the purpose that it is being provided; to provide policy support to the panel. Research that CfPS has carried out demonstrates that scrutiny is more effective when a scrutiny body has a dedicated resource (in the form of an officer, or officers) to carry out work on its behalf²⁸.

We have noted above the fact that the panel will need to carry out work beyond just its core statutory 'special functions', and to do this a discrete officer resource will be necessary. The case for backfilling on its own is not necessarily made out.

There is provision in the Act for agreement, between local authorities, of joint funding mechanisms, to supplement this central resource²⁹. Depending on the remit and role of the panel (ie how many investigations it carries out, and in what level of depth it conducts its scrutiny) it may make sense for authorities to link together their support for the panel and their support for CSP scrutiny. This approach, being taken in Gloucestershire, will ensure that these two linked forms of scrutiny will work in concert. However, it may force a structural solution which is not appropriate for all authorities, and risk creating a community safety scrutiny 'silo' that is separate from other forms of local authority scrutiny, which could be harmful.

The panel will need to consider its resource 'envelope' before deciding what work to carry out in a given year – an issue discussed above, when considering work programming.

Member expenses

£920 is being made available for each member of the panel to support their work. This will cover attendance at meetings and travel expenses and is a continuing financial commitment from the Home Office for 2013/14 and beyond.

²⁷ By the Home Office at roadshows carried out in early 2012.

²⁸ Centre for Public Scrutiny. (2012) *Joining the dots*; see also (2011) 2010 annual survey of overview and scrutiny in local government

²⁹ Schedule 6, paragraph 11



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