



**Strategic Policing and Crime Board**

**19 March 2019**

**Police and Crime Plan Priority:** *Building Trust and Confidence in Policing*

**Title:** *Governance of West Midlands Police*

**Presented by:** *Jonathan Jardine, Chief Executive*

**Purpose of paper**

To support the Police and Crime Commissioner's potential forthcoming decision regarding the proposed merger of the policing governance function for West Midlands Police with the Mayoral functions of West Midlands Combined Authority.

**Background**

The Police and Crime Plan describes the Commissioner's approach to joint working with West Midlands Combined Authority, stating:

"I will play an appropriate role in the development of the West Midlands Combined Authority, seeing the potential for improved transport provision, shared approaches to key community safety issues and increased prosperity...I will also play an appropriate role in broader discussions about regional governance including the West Midlands Combined Authority."

The Commissioner has been an observer member of West Midlands Combined Authority since March 2017.

Progress against this commitment was last reported to Strategic Policing and Crime Board in June 2018 (<https://www.westmidlands-pcc.gov.uk/media/486641/Item-7b-Update-on-Work-with-West-Midlands-Mayor-and-Combined-Authority.pdf>).

Central government and West Midlands Combined Authority announced their second "devolution agreement" on 23 November 2017 (<https://www.gov.uk/government/publications/a-second-devolution-deal-for-the-west-midlands>). Paragraph 82 states:

“The Government, the WMCA and the PCC will work together to agree a detailed governance model and a legislative timetable for incorporating the role and power of the Police and Crime Commissioner into the mayoralty, with a view to electing the first Mayor with these powers in 2020.”

The Commissioner was not a signatory to this document, and was not involved in the process by which this form of words was included in it. It is not clear on what basis the signatories felt able to require the Commissioner to act in the manner described.

West Midlands Combined Authority (WMCA) considered the second devolution agreement at its meeting on 9 February 2018.

(<https://governance.wmca.org.uk/documents/s1232/Report.pdf>).

An amendment to paragraph 3.5 of the report was proposed by Councillor George Duggins (Coventry) and seconded by Councillor Roger Lawrence (Wolverhampton) so that it read: “The Government, West Midlands Combined Authority and the West Midlands Police & Crime Commissioner will enter into discussions with the Mayor regarding a governance model for incorporating the role and powers of the Police & Crime Commissioner into the Mayor’s role and powers, **provided that the final governance model proposed following discussions is agreed by each of the Constituent Authorities, the Mayor and the Police & Crime Commissioner.** Work is now beginning to plan for this detailed and complex task, which will include the establishment of regular dialogue and joint working with the Police & Crime Commissioner in order to secure continuity in good practice and public protection. Provided there is agreement by each of the Constituent Authorities, the Mayor and the Police & Crime Commissioner will submit a report on the decisions to be taken and the proposed process for these governance changes to a future meeting of the WMCA Board, informed by guidance from the Home Office and the Ministry of Housing, Communities & Local Government.” (emphasis added)

At its meeting on 20 July 2018, WMCA took a further report concerning policing governance (<https://governance.wmca.org.uk/documents/s1892/Report.pdf>). This report agreed the development of a Governance Review and Scheme, but the recommendation concerning the proposed plan and timetable was removed, pending a further report to WMCA, considered on 14 September 2018

(<https://governance.wmca.org.uk/documents/s2064/Report.pdf>). This further report included a proposed Scheme of Governance and a governance review. The report requested that the Governance Review and Scheme were considered by Constituent Authorities and the Commissioner.

The Commissioner’s response to this request (Appendix 1) was considered at the WMCA meeting on 9 November 2019

(<https://governance.wmca.org.uk/documents/s2245/Report.pdf>). Furthermore, and following commentary from responsible authorities and the Commissioner, the report proposed a two-phase consultation, considering first the principle of the merger, and then the detail of the proposal. Thanks to Home Office, Parliamentary and electoral timing requirements, the report proposed that the consultations run sequentially,

separated by only a weekend (Phase 1: 16 November 2018 – 11 January 2019, Phase 2: 14 January 2019 to 11 March 2019). Both the West Midlands Police / Police and Crime Commissioner Joint Audit Committee and the West Midlands Police and Crime Panel have made responses to the consultations:

- JAC: <https://www.westmidlands-pcc.gov.uk/media/503014/Response-to-the-Consultation-on-Policing-Governance-from-the-Joint-Audit-Committee-of-West-Midlands-Police.pdf>
- WMPCP: <http://westmidlandspcp.co.uk/wp-content/uploads/2019/01/181211-WMPCP-Statement-on-WMCA-Stage-1-Consultation.pdf>

None of the reports considered by WMCA from 9 February 2018 to date make any amendment to the decision to give the Commissioner an equal decision making role to that held by the Mayor and Constituent Authorities.

At its meeting on 22 March 2019, it is understood that WMCA Board will consider a report that sets out the results of the two consultations, and seek approval to submit to Home Office the consultation findings, the review and the scheme, so as to initiate the Parliamentary process. It is understood that a two-thirds majority of WMCA Board members is required, though later points, such as formal statutory consent and constitutional amendments, require unanimity of all constituent members. .

### **Commissioner decision**

The WMCA report of 9 February 2018 gives the Commissioner an equal decision-making role to that of the Constituent Authorities and the Mayor. The Commissioner is not a Constituent Authority, so therefore cannot vote in WMCA Board meetings. The Commissioner's decision making process must stand alone. Similarly, the Commissioner cannot initiate or direct the transfer of the policing governance function, so the Commissioner's decision-making role is only activated if the WMCA Constituent Authorities and Mayor notify the Commissioner that they wish to proceed with the transfer.

In making a decision on whether to agree a "final governance model", the Commissioner will consider the following tests, which are adapted from those used in comparable circumstances:

- The quality and findings of public consultations on, first, the principle and, second, the detail of the proposed transfer
- The likely impact of the transfer on the effective delivery of statutory policing governance functions
- The likely impact of the transfer on the efficiency and effectiveness of West Midlands Police

It is proposed that if WMCA Board agrees to submit the consultation, review and scheme to Home Office so that merger could proceed, the Commissioner would direct the OPCC to provide him with evidence relating to the three "tests". He would then

make a decision as to whether the tests have been met and, from this, make a decision as to whether the support the proposed merger of the police governance roles. The outcome of that decision would be published in accordance with the OPCC decision-making policy and communicated with WMCA.

If the Commissioner's decision is to support the proposal, then the OPCC will work with WMCA to agree an implementation plan.

If the Commissioner's decision is to not support the proposal, then the Commissioner will communicate this to WMCA in the expectation that the process would cease at this point. If WMCA does not stop the process at this point, then the Commissioner, in consultation with the OPCC and others, would assess whether WMCA had acted lawfully and reasonably, and in accordance with its decision-making policy, before deciding what further action would be appropriate, including a potential Judicial Review.

### **Legal context**

The *Local Democracy, Economic Development and Construction Act 2009* as amended by the *Cities and Local Government Devolution Act 2016*, Section 4 Functions – 107F Functions of Mayors – Policing, enables the transfer of policing governance functions to a Mayoral Combined Authority.

This section provides that a mayor for the area of a combined authority can, by Order, be conferred functions of a police and crime commissioner for an area, where all the constituent members of the combined authority consent. Section 107F(8) specifies that any PCC function exercisable by the mayor is to be taken to be a function of the combined authority exercisable by the mayor acting individually, or by a person acting under arrangements with the mayor in accordance with provision made under Schedule 5C of the 2009 Act. Section 107F also specifies that an order providing for a mayor to exercise PCC functions must provide that there is to be no PCC in that area from a specified date and may cancel any future PCC ordinary elections which would otherwise have taken place in that same area, extend the term of office of the current PCC to the specified date and prevent any PCC by-election taking place in that area within six months of the specified date.

### **Next Steps**

The Board is asked to advise the Commissioner concerning the matters raised in this report.

Author: Jonathan Jardine

Job Title: Chief Executive, West Midlands Police and Crime Commissioner

## APPENDIX 1

### **Response from the West Midlands Police and Crime Commissioner to the West Midlands Combined Authority report *Governance Review and Scheme for the transfer of the Police and Crime Commissioner Functions***

In accordance with the request at Recommendation 2 of the report *Governance Review and Scheme for the transfer of the Police and Crime Commissioner Functions*, approved at West Midlands Combined Authority (WMCA) Board on 14 September 2018, this is the response of the West Midlands Police and Crime Commissioner (“the Commissioner”).

#### ***Key highlights***

- **The Mayor’s other responsibilities will mean that they will only be able to give a portion of their time to policing. The Police and Crime Commissioner role is specifically focused on policing, and is therefore able to concentrate fully on policing issues. This could mean policing gets less in depth scrutiny, less holding to account, and less strategic leadership if the function transfers to the Mayor.**
- **The Mayor will be accountable not only for how they fulfil their policing role, but a range of other things too. It could be less clear to the public what the Mayor’s policing role is. The Mayor will delegate the day-to-day policing function to a Deputy Mayor, who will be appointed, not elected. These changes could make the Mayor’s personal accountability for policing less clear.**
- **It remains a concern that policing resources and assets could be diverted away from policing. Instead of being owned by a separate legal entity, they will be owned by the wider Combined Authority. There are particular concerns about how the Combined Authority’s “borrowing cap” will work, which could affect both the police’s modernisation plans, and the investment plans of the Combined Authority.**
- **Many Mayoral decisions are subject to control by a committee made up of Local Authority Leaders. There is a risk that the Mayor’s policing functions become subject to influence by this committee, again diluting accountability.**
- **The Police and Crime Commissioner role is designed to protect the operational independence of policing by having clarity about the roles of both the Commissioner and Chief Constable. The Mayoral model is not**

**only more generalist, but is part of a complex network made up of multiple organisations and stakeholders, many of which can influence the Mayor. There is a risk that the operational independence of policing could be affected in the proposed arrangements.**

- If the boundaries of the Combined Authority change (i.e. a local authority leaves or joins), or the boundaries of West Midlands Police change (i.e. following merger with another Force), the policing governance function may need to be removed from the Mayoral Combined Authority.**
- The proposed consultations are inadequate because they do not allow time for evaluation between the first and second halves of the consultations.**

## **Summary**

### Specially designed or multi-purpose?

The Police and Crime Commissioner (PCC) role was designed in law for the strategic direction and holding to account policing. It is full-time, and allows in-depth scrutiny and challenge. It is this single purpose role that allows focus on issues like gangs and violence, drugs, and victim services, and the flexibility to innovate and adapt. A PCC has a democratic mandate to hold the Chief Constable to account, and the legitimacy to collaborate with other police forces and exercise national responsibilities, for example in counter-terrorism and serious and organised crime.

The proposed Mayoral model is more generalist. Policing will not get the Mayor's full-time attention. It will be one among many responsibilities, including transport, housing and jobs. Even though policing will be the most complex, highest risk and most expensive service the Mayor and West Midlands Combined Authority (WMCA) would be responsible for, it is proposed to delegate the role to an appointed Deputy. A Deputy Mayor will not have the same legitimacy to challenge and scrutinise the Chief Constable. The appointed Deputy Mayor will be at a disadvantage compared to elected PCCs, and may be less likely to have a leading role in regional and national collaborations.

### Direct or diffuse accountability?

The PCC is directly, personally accountable via elections. Voters can decide who will be PCC solely on the candidates' plans for policing, or what they have achieved for policing while in office.

In the Mayoral model, voters are choosing based on lots of issues, not just policing. Also, as many functions will be delegated to an appointed Deputy Mayor, it is less clear whether it is the Mayor or Deputy Mayor that is responsible, making accountability more nebulous.

### Legal autonomy or susceptible to influence?

The PCC is a separate legal entity. They exercise powers, such as setting the police budget or dismissing the Chief Constable, autonomously, and are scrutinised by an independent Panel.

In exercising the policing governance function, the Mayor will be subject to influence by a committee made up of local authority leaders, of which the Mayor is part. Local councils, not the Mayor or the public, pick who is on this committee, and the Mayor cannot replace its members. As a result, Mayoral decisions about policing may be subject to considerations unrelated to policing. Also, because the function moves from being a standalone legal entity to being part of the WMCA, there are uncertainties about control of police resources – which would need to be protected from use for non-policing purposes - and issues like borrowing.

### Operational independence

Police must be free to investigate crime without fear or favour. Effective and efficient policing is PCCs' main responsibility, and they must swear an oath to protect the operational independence of policing. They work with a single purpose monitoring officer whose job is to ensure the rules are followed. Across England, Wales, Scotland and Northern Ireland (except Greater Manchester), the governance of policing is a standalone function, separate from local authorities and local councillors.

West Midlands Combined Authority is a new kind of local authority, in which the Mayor works with committees of local councillors to try to deliver their agenda. There is no dedicated monitoring officer for policing matters, and local councillors have more opportunity to influence Mayoral decisions.



## **Foreword by West Midlands Police and Crime Commissioner, David Jamieson**

1. I am a supporter of the Mayoral West Midlands Combined Authority. I have been an Observer member for over two years, and have allocated police grant totalling about £360,000 to support WMCA projects and activities, including the Mental Health Commission, joint work on reducing female offending and work to improve the secure estate for young people. The Force and my Office are playing a leading role in much of this work. I see the Public Service Reform agenda, particularly as it relates to youth justice and data sharing and analytics, as offering potential to develop a more preventative approach. I have engaged closely with the proposals for the transfer of the Fire Authority to WMCA. Previously, in 2015-16, I sought to enter into discussions with Combined Authority colleagues about how my role might work with what was then the proposed mayoralty, but that offer was rebuffed. I have since sought to maintain close engagement with the mayoralty, and Andy Street and I meet regularly.
2. I must be very clear however that neither my manifesto, nor my Police and Crime Plan, says that there should automatically be a transfer of the policing governance function. The 300,000 people who voted for me in May 2016 were not doing so on the understanding that I would transfer the policing governance function to WMCA and its then still proposed mayor.
3. In my Police and Crime Plan I commit to "play[ing] an appropriate role in broader discussions about regional governance including the West Midlands Combined Authority." This I have done. I was not, however, part of the Devolution Agreement 2 negotiations. My Office was asked for suggested content and, in good faith, we developed a number of proposals. On policing governance, we submitted the following:  
  
*"WMCA, the Police and Crime Commissioner and Government will work together to review approaches to the governance of policing in our area, commencing in early 2018. The review will seek to identify a governance model that is in the best interests of the people of the West Midlands by preserving the efficiency, effectiveness and clear accountability of West Midlands Police".*
4. This is not the formulation that appeared in Devo 2 and it has never been explained to me why our proposal was rejected. Instead, without my knowledge or participation, it was "agreed" that the policing governance function for West Midlands Police would merge into the mayoralty, and that I would support this process. I do not believe WMCA or the government have the statutory authority to seek to direct me in this way. However, I was pleased by WMCA's clear decision on 9 February 2018 that the proposed governance transfer cannot go ahead without my consent.

5. The Oath of Office for Police and Crime Commissioners, which I last took in May 2016, places on me a duty to act with "integrity and diligence" in fulfilling my role as a PCC. I would be breaching this oath if I were to simply accept that there should be a fundamental change to the governance of West Midlands Police without understanding what will be achieved by such a step. The Police Reform and Social Responsibility Act 2011 was flagship legislation for the coalition administration, and was the subject of much national and local scrutiny. Its introduction was the largest reform of police governance since Watch Committees in 1835. The introduction of PCCs was accompanied by an extensive effort to ensure that the checks and balances in the model were right. This was as it should have been.
6. Placing policing governance into the responsibility of a Combined Authority, with its complex inter-relationships between a Mayor, a new form of local authority, a cabinet / committee of local authority leaders, unusual statutory basis, multiple stakeholders (LEPs, County Councils, District Councils, constituents, non-constituents, observers etc) and novel devolution and funding arrangements, is an equally momentous change - one that is taking place just a few years after PCCs first took office. I do not accept the assertion that the two models are basically the same. I suggest that only now are PCCs fully defining and exploiting the scope of their role. Despite this, the proposals for a further change to police governance have had none of the detailed Parliamentary scrutiny that accompanied the introduction of PCCs. There have been no detailed discussions with the National Police Chiefs Council, no Home Office led seminars and workshops, no substantive engagement with the Association of Police and Crime Commissioners and other representative bodies. I am not aware of any regulatory impact assessment, or Home Affairs Committee inquiry. There has been no assessment of what it is that is wrong with the PCC model that needs fixing with this change. There have been no reviews of the effectiveness of the model introduced in Greater Manchester, or assessment of the working relationships in areas where the mayoral and policing boundaries overlap but do not align. There appears to have been no consideration of the implications that would arise if the merger of policing governance in the West Midlands went ahead, and then the constituent membership of WMCA, or the boundary of West Midlands Police, changed. This lack of evidence and assessment makes it more difficult for me to make a decision as to whether the transfer of the policing governance function should go ahead. Acting with this level of uncertainty creates risk.
7. The public's confidence in policing is built on fundamental principles, notably the local accountability and operational independence of Chief Constables. Governance reform based on uncertainty represents a significant risk to those principles. If the public do not have confidence in the local governance of policing, then confidence in policing itself will erode.

8. Before I make a decision on whether the transfer should go ahead, I expect to see credible evidence that there will be an improvement in the local policing governance function and that the fundamental principles on which our policing governance model is based will be preserved and enhanced. There needs to be clear evidence why a specialised, dedicated and focused PCC-based governance role - which was, after all, specifically designed for policing - is less good than a Mayoral CA model that makes policing governance one among a multiplicity of functions. WMCA's governance review does not address these questions, and instead seeks to replicate the current model to the fullest extent possible. I have asked for this consultation response in order to begin to fill this vacuum.

**David Jamieson, West Midlands Police and Crime Commissioner**

**19 October 2018**

## **Introduction**

9. The Commissioner welcomes WMCA's clear decision that he has a role equal to that of constituent members in deciding whether a transfer of Police and Crime Commissioner (PCC) functions should proceed. As set out in its report on 9 February, WMCA agreed that any transfer of the policing governance function would only proceed "provided that the final governance model proposed following discussions is **agreed by each of the Constituent Authorities, the Mayor and the Police & Crime Commissioner**" [emphasis added]. WMCA has no statutory authority to direct the Commissioner in the manner in which he makes this decision.
10. In making a decision on whether to agree a "final governance model", the Commissioner will consider the following tests, which are adapted from those used in comparable circumstances:
  - The quality and findings of public consultations on, first, the principle and, second, the detail of the proposed transfer
  - The likely impact of the transfer on the effective delivery of statutory policing governance functions
  - The likely impact of the transfer on the efficiency and effectiveness of West Midlands Police
11. The policing governance function comprises dozens of statutory duties and requirements. This paper does not address all these, but instead concentrates on the main responsibilities:
  - Strategic direction
  - The Strategic Policing Requirement and police collaboration
  - Holding to account
  - Budgets and resources for policing
  - Appointment of a Chief Constable
  - Suspension and dismissal of a Chief Constable
  - Partnership working associated with community safety, the criminal justice system and other public sector partners
12. With regard to the likely impact on the efficiency and effectiveness of West Midlands Police, this paper discusses:
  - Impact on crime and disorder, community safety, and the prevention of crime
  - Operational independence

## **General observations**

13. West Midlands Police is an operational delivery organisation with a revenue budget of roughly £550m and around 10,000 Officers and staff. It is the second largest police force in England and Wales. It is responsible for the delivery of key public services that are critical to community safety and public confidence, locally, regionally and nationally. WMP has an operating budget larger than all but one of WMCA's constituent member local authorities, and is significantly larger than WMCA itself, and arguably carries as broad a range of functions as a local authority – ranging from addressing localised ASB to the response to, and investigation of, a mass casualty terrorist attack involving chemical, biological or radiological weapons. WMP carries at least as much risk as local authorities in relation to, for example, child and adult safeguarding, and yet also manages risks such as Covert Human Intelligence Source handling, offender management, intrusive covert surveillance and property interference, firearms capabilities, public order and witness protection, which are almost entirely unknown to local authorities. However, if it were proposed that WMCA were to take over the governance function of a local authority, there would be an expectation of detailed consultation, a clear rationale, statements of anticipated benefits, and so on. Given the disparity between WMCA and the scale of the policing governance function for an organisation the size of West Midlands Police, it is arguably surprising that the Governance Review does not consider the willingness, capability and capacity of WMCA to reorient its strategic intent towards what would be by far its largest and most onerous budgetary and statutory duties. Instead, the report essentially proposes bolting on a policing governance function broadly unchanged from that which currently exists to WMCA as an institution which again will be broadly unchanged.
14. The Governance Review starts from the presumption that, in governance terms, it is appropriate for the Mayor to largely delegate the policing governance function to someone else, an appointed Deputy. Given that it could be asserted that policing is financially much larger than the existing WMCA, as complex in its range of functions as WMCA, and brings significant new risks to WMCA, the conclusion that the Mayor should automatically hand off governance of this function to a Deputy is arguably questionable. An alternative approach might be to create Deputies for the Mayor's existing responsibilities in transport, skills, etc, and delegate these functions to them, thereby allowing the Mayor sufficient capacity to devote himself or herself to policing governance, which is a very costly, complex and high risk function. Instead, the Governance Review automatically assumes that policing is a second tier function, suitable for delegation.
15. The viability of the policing governance transfer is predicated on the coterminosity of the WMP and WMCA boundaries – the latter derived from the boundaries of the constituent member local authorities. In a nutshell, as long as Coventry, Solihull, Birmingham, Walsall, Wolverhampton, Sandwell and

Dudley are the constituent members, and WMP only encompasses these local authority areas, then a Mayor with policing governance responsibilities for WMP becomes statutorily possible. It should be observed that neither of these contingencies is necessarily permanent. Three eventualities would potentially require the recreation of a separate PCC: First, if any existing constituent authority left WMCA (thus denying the voters in that area the ability to pick the Mayor who sets the police precept for their area). Second, if any other local authority area became a constituent member (thus if, for example, Warwickshire County Council became a constituent member, Warwickshire voters would be able to vote for the West Midlands Mayor, and hence who sets the policing precept for West Midlands residents, as well as having another vote for the Warwickshire PCC who sets the precept for Warwickshire Police in their area). Third, if WMP merged with a Force outside the WMCA area (while such a merger is unlikely, West Mercia Police's decision to withdraw from its Strategic Alliance with Warwickshire Police demonstrates that such shifts could occur).

### ***Public consultation***

16. It is recognised that public consultation has not yet gone ahead, and therefore consideration at this point will be as to whether the proposed approach to consultation is likely to provide sufficient opportunity for engagement and response.
17. The consultation proposals are inadequate. It is proposed that there will be a consultation in two halves, separated only by the weekend of 12-13 January 2019. The results of the first half of the consultation will not be published before the second half begins. First, there will be no opportunity for reflection between the two segments, making the separation of the two arguably meaningless. Second, this will doubtless be confusing to the public, who will not understand why their responses to the first consultation will not be considered before another consultation on a similar issue is launched. Finally, the second half of the consultation concludes just three days before papers have to be published for a WMCA Board meeting, making reasonable consideration of the consultation findings implausible.
18. Proper public consideration requires two, separate consultations, conducted in accordance with Cabinet Office approved methodologies. The second should only proceed after consideration of the findings of the first consultation.
19. Furthermore, the approach to consultation is at variance with that adopted for the transfer of West Midlands Fire Authority functions to the Mayoralty and WMCA, where there were two full, separate consultations, with time between them to consider the findings.

### ***The effective delivery of statutory policing governance functions***

20. The policing governance function includes dozens of statutory duties and requirements, some of which the Commissioner set out in his letter to the Minister of State for Policing, copied to the Mayor, in March 2018. The Commissioner's final decision on whether to agree to allow transfer to proceed will consider a fuller range of functions. For the purposes of this consultation, initial consideration is given to what are arguably the core policing governance functions.

**21. Will transfer improve strategic direction setting and the quality of the Police and Crime Plan?**

The Police and Crime Plan ("the Plan") is required by law to set out:

- The PCC's police and crime objectives
- The policing the Chief Constable is to provide
- The financial and other resources the PCC will make available to the Chief Constable to provide policing
- How the Chief Constable will report to the PCC about policing
- How the Chief Constable's performance will be measured
- Information about any crime and disorder reduction grants to be made by the PCC, any conditions made

The Plan must be agreed within the financial year following an election and, while it can remain for a whole term of office, it can be varied as often as required. In the proposed scheme, setting the Plan would be a Mayoral function that cannot be delegated.

It is currently the case that the Plan is the sole local mechanism for setting the strategic direction of West Midlands Police. The Force's "Ambition Plan" is the manifestation of the Chief Constable's duty to "have regard" to the Police and Crime Plan. In the proposed scheme, this clarity may be eroded. Instead, the Plan would become one among a number of strategic plans for WMCA, including already an overarching annual plan, a local industrial strategy, a skills plan, an environmental strategy, and various transport related plans and strategies. Others will follow. At one level, this could be an opportunity for the strategic direction of policing to be more embedded in wider public service landscape. However, this is not the statutory function of a Police and Crime Plan, which is required to focus on police and crime objectives, police resources, the performance of a Force and its Chief Constable, and crime and disorder grants.

The risk therefore, is that instead of clear strategic direction for the Force, there is created a complex patchwork of plans and strategies, with varying objectives and methodologies, and a lack of clarity concerning the hierarchy of priorities, accountability and reporting. The Chief Constable may not be clear which plan

or strategy he or she is working to. There is similarly a risk that the Police and Crime Plan, instead of setting the strategic objectives for the Force, becomes a statement on partnership working, seeking to accommodate all the various commitments and priorities that appear in other plans and strategies across WMCA. Thus instead of a Plan written in the singular first person as is currently the case (“I will”), with objectives for WMP set by a PCC for which WMP can be held to account, it becomes more nebulous, written in the plural (“we commit to”, for example), setting out objectives that a diffuse partnership of stakeholders are expected to work towards. This not only diminishes clarity of purpose and outcome measurement, but undermines the notion of a single point of accountability.

Overall, there is a risk that transfer will degrade strategic direction setting and the quality of the Police and Crime Plan.

## **22. Will transfer improve the extent to which the Mayor and the Force "have regard" to the Strategic Policing Requirement, and collaborate with other police forces?**

The Strategic Policing Requirement (SPR) relates to the national threats to which policing must “have regard”. These are set by the Home Secretary and are terrorism, serious and organised crime, cybercrime threats, public order, civil emergencies and child sexual abuse. Accompanying the SPR is a duty to keep under review opportunities for police collaboration.

It is not specified how PCCs or Mayors are expected to “have regard” to the SPR; this is for local determination. However, many of the capabilities required to address the threats set out in the SPR are addressed via collaborative arrangements such as the Counter-Terrorism Policing Network, Regional Organised Crime Units, and the National Police Co-ordination Centre. The oversight of these collaborations rests with PCCs, each of whom has a democratic mandate to exercise their statutory functions.

In the proposed model post-transfer, it seems likely that the day-to-day oversight of the SPR “have regard” duty will fall to the proposed Deputy Mayor for Policing. This raises two concerns. First, Mayors are responsible for a range of place-based issues as they manifest *in their area*. Thus the impulse to engage in policing collaboration at the regional and national levels is potentially weaker for Mayors than it is for PCCs. From this, it might be suggested that Deputy Mayors are equally more likely to focus on local place-based issues than regional and national policing collaboration. Secondly, Deputy Mayors face a democratic deficit compared to the PCCs in other areas with whom they will work. While a PCC engages in the oversight of policing collaboration imbued with the legitimacy of a democratic mandate, a Deputy Mayor is an appointee, therefore in some senses subordinate to both a PCC and their Mayor. A Deputy Mayor risks not entering into police collaboration as an equal.



Concerns relating to both the appetite of Mayors to participate in police collaboration, and the relative legitimacy of Deputy Mayors, raise concerns relating to whether transfer will improve the extent to which the Mayor and the Force "have regard" to the SPR, and are able to fulfil the duty to keep police collaboration under review.

### **23. Will transfer improve “holding to account”, and the scrutiny, support and challenge for the Force's performance?**

Mechanisms by which PCCs should “hold to account”, scrutinise, support and challenge Force performance are not set out in legislation or guidance, and are hence for local determination. There are significant variations across PCCs and, as the Governance Review acknowledges, here in the West Midlands the PCC has established “strong and visible accountability [sic] and governance arrangements”. Conversely, there are large differences in approach between Greater Manchester and London, where Mayors hold the function. In London, the Mayor’s Office for Policing and Crime (MOPAC) maintains robust and highly visible accountability mechanisms, notably public thematic “Policing Matters” and “Justice Matters” sessions supported by extensive documentation and transcription. Minutes of regular meetings between the Deputy Mayor and Metropolitan Police Commissioner are published. Greater Manchester Combined Authority (GMCA) does not appear to hold any public accountability sessions specifically relating to policing or publish any documentation concerning the performance of Greater Manchester Police (GMP). While using two case studies as the basis for an evaluation should be approached with caution, the key difference is that while MOPAC has its own statutory identity as a corporation sole, the policing governance function in GMCA does not – it is a merged part of a larger organisation. It is suggested then that the proposed governance model, which does not afford the policing governance role the statutory autonomy of a corporation sole, creates that risk that the performance management function could wither.

It is presumed in the Governance Review that day-to-day exercise of the holding to account function will fall to the Deputy. Analysis of such an approach raises further considerations. First, while a PCC is directly elected, and therefore carries a legitimate personal mandate, the Deputy Mayor is an appointee whose legitimacy extends no further than the Mayor’s personal support. Thus there is always an ambiguity in the extent to which the Deputy has the authority to challenge and hold a Chief Constable to account. A Chief Constable might quite rightly regard the Deputy as merely the messenger or intermediary of the Mayor, and thus be uncertain as to whether the Mayor’s position has been accurately communicated, and whether the Deputy Mayor has the Mayor’s authority when offering scrutiny and challenge.

This plays out in the second consideration, which is where there are disagreements between a Deputy Mayor and a Chief Constable. It seems likely that in these

circumstances, both Deputy Mayor and Chief Constable will reach the conclusion that resolution will only come when there is direct negotiation between Mayor and Chief Constable – indeed the latter may insist on it. This could further undermine the legitimacy of the Deputy Mayor whose authority will be bounded not just by that granted by the Mayor, but actually that negotiated by the Mayor and Chief Constable. A possible by-product of the proposed governance model therefore is that the Mayor, unlike a PCC, does not offer sustained and consistent strategic direction and holding to account, but instead takes on a detached mediator role, intervening and arbitrating on an *ad hoc*, reactive and spontaneous basis, in effect only becoming involved when something has gone wrong in the working relationship between the Chief Constable and Deputy Mayor.

Finally, the law and the Governance Review are clear that there are some Mayoral functions that cannot be delegated. While sensible, the consequence is a hierarchy of responsibilities: there are primary duties, which remain with the Mayor, and the secondary matters, that are handed to the Deputy Mayor. In addition to the obvious dilution of the “single point of accountability”, it is possible that the Deputy Mayor will, in practice, be a less powerful and legitimate mechanism for the delivery of policing governance than a PCC with the full range of responsibilities and a direct democratic mandate.

#### **24. Will transfer improve the processes for deciding the Force's budget, setting the precept, and allocating resources to the Chief Constable?**

A PCC sets the budget for their police force, including the share of local taxation that goes to policing, known as the precept. Precept increases are subject to a referendum threshold set by the Secretary of State for Housing, Communities and Local Government (HCLG). A statutory process allows the Police and Crime Panel (PCP) to review budget proposals and impose a partial veto on a precept proposal. It is proposed that these powers would transfer to the Mayor, and cannot be delegated.

It is therefore the case that statutorily the process is unchanged. However, this would be to ignore the reality of Combined Authority (CA) budget setting process. Whereas a PCC sets the budget autonomously, subject only to HCLG referendum thresholds and PCP scrutiny and challenge, a Mayor seeks to set not only the police budget and precept, but also that for the wider CA, including the Mayoral precept. For example, a Mayor requires the support of the constituent authorities in order to set a mayoral precept – which the Mayor failed to secure earlier this year. Therefore it is possible that in order to set a CA budget and precept, the Mayor will find it necessary to include in the negotiations his or her proposals for policing budget and precept. This creates the risk that the policing budget and precept will be subject to considerations unrelated to policing, and in practice subject to Cabinet approval.

It is recognised that the statutory provisions of the proposed Scheme, and its general intent, seek to replicate the protections afforded by corporation sole status

to the fullest extent possible. However, it remains the case that the assets and resources currently held by West Midlands PCC transfer to WMCA, not a new or rebadged corporation sole. The protections for police assets and resources are therefore novel and, to an extent, untested. There remains a real concern that, by means not yet identified, police assets and resources could be applied to purposes outside policing. Issues relating to borrowing against police resources and control of the police estate and other assets are pertinent here.

More specifically, the Commissioner is aware that WMCA is subject to a borrowing regime that requires positive consent from HM Treasury regarding acceptable borrowing levels. While it is assumed that a revised borrowing limit will be agreed, this is not certain. It is likely that in coming years there will be proposals for significant additional borrowing to fund refurbishment of the police estate. Inability to borrow will impede this programme, and again policing's "share" of the total eligible borrowing cap will be the product of negotiations that may have little to do with policing.

It is concluded that the proposed scheme poses significant risk to the processes for deciding the Force's budget, setting the precept, and allocating resources to the Chief Constable.

#### **25. Will transfer improve the processes for the appointment of the Chief Constable?**

The appointment of a Chief Constable is a PCC statutory function that would transfer to the Mayor. It cannot be delegated. The selection process includes an oversight role for the Police and Crime Panel.

A PCC can exercise this power largely autonomously, though it is sensible for a PCC to avail themselves of support from the College of Policing and take other steps to enhance the legitimacy of the process.

As set out in Para 24, the risk is that the selection process becomes subject to pressures arising from the wider range of stakeholders on whom the Mayor is dependent to deliver their objectives.

It is also worth noting that the person appointing the Chief Constable (the Mayor) would not be the person with whom the Chief Constable would be working most closely, and being routinely held to account by (the Deputy Mayor).

#### **26. Will transfer improve utilisation of the powers for the suspension and dismissal of a Chief Constable?**

PCCs have powers to suspend their Chief Constable and require their resignation or retirement. The law places a duty on a PCC to seek advice from HM Chief Inspector of Constabulary in the exercise of these powers. These powers would transfer to the Mayor and cannot be delegated.

This power is among the most onerous that PCCs hold, given that Chief Constables are office holders who, in accordance with the Policing Protocol, must

be able to exercise operational independence unfettered by “improper political interference”. Developing case law is helping PCCs and Chief Constables to understand the appropriate use of this power.

As set out in Para 24, while a Mayor would ostensibly have statutory autonomy and individual accountability in the exercise of this power, in practice the Mayor is embedded in a governance model that has dependencies to various actors, notably the Leaders of constituent local authorities. It is thus straightforward to imagine realistic scenarios in which these stakeholders are able to apply very real pressure to the Mayor to either exercise, or not exercise, these powers. In such circumstances, while strict accountability for the exercise of the power might continue to rest with the Mayor, the operational decision-making for their use may be more widely spread.

Placing the power to suspend or dismiss the Chief Constable into the hands of a Mayor who is *more susceptible* to pressure from a range of stakeholders than a PCC, stakeholders who are not ultimately accountable for the exercise of that power, poses a potential risk to the operational independence of a Chief Constable. There is further discussion concerning operational independence below.

### **27. Will transfer enhance partnership working associated with community safety, the criminal justice system and other public sector partners?**

There are three main duties associated with partnership working that apply to PCCs: community safety, the criminal justice system, and specific public sector partners (fire and ambulance services). The assertion that transfer would enhance these partnerships is central to the governance review, almost to the exclusion of the other policing governance responsibilities.

While it is accepted that transfer would not damage partnership working, the assertion that it will be enhanced is more difficult to evidence. For example, there is a common sense argument that collaboration between police and fire services will be enhanced by their governance coming into the responsibility of a common statutory body. However, the specific proposals for the governance of the fire service in WMCA do not appear to have been designed to facilitate joint working. First, there is no Deputy Mayor for Fire to initially act as a single point of contact or later, one assumes, become a joint Deputy Mayor for Policing and Fire. Second, the proposal instead creates a “Fire Advisory Committee” with arguably uncertain and contradictory terms of reference.

Similarly, it is recognised that there is an intent to enhance partnership working across the public sector as part of the “public service reform” agenda. The Mental Health Commission is a positive case study, but it is worth noting that its Director, a police officer, was seconded into role with PCC approval and part-funding, and the OPCC is financially supporting two of its projects. It cannot therefore be argued that an opportunity has been missed that transfer would somehow fix. The Office for Data Analytics offers some promise, but there is also a recognition that it is police investment in Data Driven Insight that offers the most exciting prospects for

public service collaboration, rather than the police benefitting from WMCA's capabilities. Co-operation between WMCA and the OPCC on development of the secure estate for children is well developed, and it is not obvious that governance transfer would offer any particular advantage. Across the rest of the wider public service reform agenda, the Mayor's convening powers are still developing.

Conversely, the development of structures to deliver the PCC's partnership duties is making good progress. A WM Community Safety Partnership has been established, and in 2019-20 it will assume its full role in advising on the expenditure of £3.8m of police grant for community safety activity across the area, as well as supporting novel joint approaches to service delivery. WMCA is a participant member. We anticipate significant efficiency gains and new services via this approach. The West Midlands Local Criminal Justice Board has been re-established, and is actively developing its approach to performance management and service improvement.

The PCC's broader convening and leadership role also shows good progress. The community-led Gangs and Violence Commission has led to a comprehensive work programme that makes real the mantra of a "public health" approach to reducing violence, along with the multi-agency Violence Prevention Alliance. The Commissioner's work on drugs policy, unauthorised encampments and network resilience has prompted activity across a diverse range of organisations. The Victims Commission has been a notable success in both bringing together provider organisations, as well as delivering efficiency gains and new services from a static budget.

Overall, while the commitment to seeing governance transfer as a means to further partnership working is welcome, it is reasonable to suggest that the existing structure is delivering good progress. While WMCA may be attracted to the policing governance function because it offers access to the work the Commissioner has already undertaken, it is not necessarily clear what other gains will emerge.

#### *The efficiency and effectiveness of West Midlands Police*

### **28. Will transfer impact on crime and disorder, community safety, and the prevention of crime?**

The causal relationships between governance models and the performance of public services is both contested and not well understood. The theoretical and practical consequences of devolution versus centralised governance are hotly debated, and the assumptions that underpin the adoption of directly elected individuals as "single points of accountability" are also open to debate. It is reasonable to assert that the effectiveness of a directly elected individual in role is in significant part of product of the characteristics and attributes of the person holding that role. It is not therefore possible to say with any confidence whether a transfer will, or not, automatically have an effect on crime and disorder, community

safety and the prevention of crime, and therefore it cannot be evidenced that the effort of transfer will yield any return in this regard.

The Police Reform and Social Responsibility Act 2011 – which established PCCs – is based on the fundamental principle that efficient, effective policing is responsive and accountable to public preferences. It views policing as contextual, which is to mean policing should, or even “must”, reflect the priorities and concerns of the public, if it is to be regarded as efficient, effective and legitimate. It therefore introduces PCCs with the mandate to offer strategic direction to policing, that is, capture, consider and reflect the views of the public in the setting of police priorities and the allocation of resources. This view of policing governance reflects a recognition that policing is not just the provision of a service or transaction, but part of the relationship between public and state that defines what sort of society people collectively wish to live in. Both the PCC model, and the Mayoral model, rest on the assumptions that underpin this conception of the role of policing governance.

It is accepted that it is not possible to say with certainty how transfer will impact on crime and disorder, community safety, and the prevention of crime. However, given the breadth and gravity of the duty on the policing governance function, it is possible to offer some comparison. A PCC is tasked with the full-time duty to hold the Chief Constable to account and offer strategic direction based on a democratic mandate derived from securing the support of the largest share of voters. PCCs are directly and solely accountable to the electorate for how they undertake these duties. Conversely, the Mayor’s democratic mandate is only partial; a voter has to consider not only policing, but also all the other things the Mayor may have campaigned on, such as housing or transport. When in office their approach to policing governance will inevitably be part-time: they will have to also concern themselves with transport, productivity and skills, economic development, and housing matters. It is proposed that the day-to-day exercise of the policing governance function will be handed off to a Deputy in whose selection the electorate has no role. Finally, the Mayor’s personal accountability is dilute too; at election time their performance will not solely be measured against the policing governance function, but will be assessed against a whole range of policy areas.

Overall then, it cannot be evidenced that transfer will, in and of itself, yield an improvement in crime and disorder, community safety, and the prevention of crime, but that the PCC model at least offers the assurance that it is specifically designed to address these issues.

**29. Will transfer more greatly protect the operational independence of the Chief Constable, more effectively preserve and protect the "duty of constables to maintain the Queen’s Peace without fear or favour", and reduce the risk of "improper political interference"?**

The operational independence of policing is not defined in legislation, but the Policing Protocol – a statutory instrument published in 2011 – offers guidance to PCCs and Chief Constables on its meaning. In very broad summary, Chief

Constables have autonomy in the day-to-day operational direction and control of the Force, in such matters as issuing warrants to attested officers to enable them to exercise police powers, appointment and dismissal of officers and staff, organisational matters, deployment of officers, and, of course, “total discretion to investigate or require an investigation into crimes and individuals as he or she sees fit”. A PCC’s duty to not interfere in operational independence of police officers is included in the Declaration of Acceptance of Office which PCCs must swear, which, it is assumed, a Mayor would also have to swear before they could take office. The Policing Protocol would apply to the Mayor as it does the PCC and Chief Constable under the current arrangements.

The concept of operational independence has been central to the accepted understanding of policing governance since at least the 1960s. Various case studies raised concerns regarding improper local political influence on police investigations, and prompted a steady shift away from policing governance as an embedded local authority function. In broad summary, this led first to standalone police authorities with a mix of councillor and independent members and, latterly, directly elected PCCs in England and Wales (and Mayor in London) who are corporations sole in their own right. In Scotland there is a police authority made up entirely of independent members, and in Northern Ireland a policing board with a mix of National Assembly and independent members. These models are very different in some ways, but they have at their centre an assumption that policing governance is a distinct, separate function that should not belong to a local authority, in part because of the risk that this will lead to improper influence on the operational independence of policing. WMCA is, in essence, a new form of local authority.

As discussed in Para 24, there is an easily distinguishable contrast between the context in which a PCC operates, and that which applies to a Mayor. A PCC is a statutorily autonomous corporation sole, personally and directly democratically accountable for their actions, and supported by a monitoring officer concerned solely with the exercise of the policing governance function. A Mayor, conversely, while directly elected, is embedded in a wider statutory construct – WMCA, in this case – that enmeshes him or her in a constitution set by others, processes agreed by others, and making decisions in the context not just of policing and community safety, but a broad range of stakeholders across a range of issues some of which are less related to policing. The dedicated monitoring officer role is lost, and becomes part of responsibilities that range across the whole of the CA’s functions. There may be potential risks to operational independence arising from these differences. First, the Mayor is dependent on the support of a range of stakeholders to deliver much of their agenda, and thus there is a risk that a transactional approach will see policing governance, and operational independence, influenced by the desire to achieve non-policing goals. Second, the constitutional arrangements and processes that support the Mayoral CA are more complex than those that support a PCC, creating the risk that the clear

accountabilities that currently exist will be become blurred. Third, the lack of a dedicated monitoring officer function for policing governance reduces the oversight of operational independence.