

Public Document Pack



Wednesday, 14 June 2023

Date: **Thursday, 22 June 2023**

Time: **At the conclusion of the ordinary meeting of the Panel**

Place: **Council Chamber, County Hall, Matlock**

For any further information please contact:

Ivan Walters
ivan.walters@derbyshire.gov.uk
01629 538328

AGENDA

1. Apologies for Absence
To receive apologies for absence (if any)
2. Declarations of Interest
To receive declarations of interest (if any)
3. Confirmation Hearing to the Role of Deputy Police and Crime Commissioner (Pages 1 - 38)

Following notification from the Police and Crime Commissioner of her intention to appoint the preferred candidate Robert Flatley to the role of Deputy Police and Crime Commissioner, for the panel to hold a Confirmation Hearing in accordance with Schedule 1 of the Police Reform and Social Responsibility Act 2011.

4. Exclusion of the Public
To move "That under Regulation 21 (1)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the public be excluded from the meeting for the

following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972”

5. Private Session

Panel members to be given the opportunity to discuss the proposed appointment and agree their decision and recommendations to the Police and Crime Commissioner.



FOR PUBLICATION

DERBYSHIRE POLICE AND CRIME PANEL

22 June 2023

Report of the Director of Legal and Democratic Services

Confirmation Hearing Process for the role of Deputy Police and Crime Commissioner

1. Purpose

- 1.1 To outline the process to be followed in respect of the proposed appointment to the position of Deputy Police and Crime Commissioner for Derbyshire.

2. Information and Analysis

- 2.1 For confirmation hearings, the Schedule 1 Part 10 of the Police Reform and Social Responsibility Act 2011 enables the Panel to:
- (i) Review the proposed appointment, by holding a Confirmation Hearing within three weeks of notification being given. A 'confirmation hearing' is a meeting of the Panel, held in public, at which the candidate is requested to appear for the purpose of answering questions relating to the appointment;
 - (ii) Make a report to the Commissioner on the proposed senior appointment;
 - (iii) Include a recommendation to the Commissioner as to whether or not the candidate should be appointed,
 - (iv) Publish the report to the Commissioner made under (ii).
- 2.2 On 15 May 2023 the Panel received formal notification from the Police and Crime Commissioner's Office of the proposed appointment to the role of Deputy Police and Crime Commissioner. This appointment is a

permanent appointment, and therefore it is subject to the public scrutiny that is required as part of a proposed senior appointment within the meaning of Schedule 1 of the Police Reform and Social Responsibility Act 2011. In order to assist the Panel in reviewing the suitability of the preferred candidate, the Commissioner has provided the following documentation, which has been attached as an Appendix attached to this report:

- Name of the preferred candidate;
- Statement/report from the Commissioner stating why the preferred candidate meets the criteria of role;
- Terms and conditions of appointment.

2.3 Unfortunately due to the availability of required attendees, the hearing is not taking place within three weeks of the notification from the Police and Crime Commissioner.

Procedure for the Hearing

2.4 The first part of the meeting will be conducted in public and structured as follows:

- 1) The candidate will be welcomed to the meeting.
- 2) The Commissioner will have the opportunity to make any comments on the candidate and the proposed appointment.
- 3) The candidate will have an opportunity to present to the Panel their understanding of the role.
- 4) The Panel will have the opportunity to ask questions of the Commissioner and the candidate.
- 5) The candidate will be given opportunity to clarify any answers given during the hearing and ask questions of the Panel about the next stage of the process.

2.5 The Panel will ask questions of the candidate which relate to their professional competence and personal independence, the answers to which will enable Panel Members to evaluate their suitability for the role.

2.6 On the Close of the Hearing the Panel will hold a closed session in order to decide on its recommendations to the Commissioner regarding the appointment of the preferred candidate to the role of Deputy Police and Crime Commissioner.

2.7 At the end of the Confirmation Hearing session the Panel will discuss the following:

- Whether the candidate has the professional competence to exercise the role.
 - Whether the Panel feels that the candidate has the personal independence to exercise the role.
- 2.8 Where a candidate meets the standards expected by the Commissioner for the political appointment of Deputy Police and Crime Commissioner, but there is still cause for concern about their suitability, it may be appropriate to outline those concerns in the Panel's response to the Commissioner.
- 2.9 Where a candidate does not meet the minimum standards, this would suggest a significant failure in the appointments process undertaken by the Commissioner. If the Panel believes that there has been significant failure in the appointments process, the Panel may choose to not recommend the candidate to the role of Deputy Police and Crime Commissioner.
- 2.10 The recommendations relating to the outcomes of the Confirmation Hearing will be communicated to the Commissioner in writing by the next working day. The Panel's Support Officer will, in consultation with the Chair of the Panel, send a report on the proposed appointment to the Commissioner confirming the Panel's recommendation as to whether or not the candidate should be appointed. Where the Panel is recommending refusal, a summary of the principal reasons will be included. The Panel will normally publish its decision and report five working days after the Confirmation Hearing has taken place. However, the Commissioner may request to the Chair that the Panel bring forward or delay publication of the decision.
- 2.11 In response to the Panel's report, the Commissioner must notify the Panel whether they will accept or reject the Panel's recommendation.
- 2.12 Where Panel has recommended approval, they will write to the Commissioner accordingly who will respond in accordance with the statutory process.
- 2.13 Where the Panel has recommended refusal and the PCC decides not to appoint, the Panel's report will normally be published alongside a statement by the PCC setting out a timetable and process to make a new appointment. Where the PCC continues with the appointment, they will normally make a response at the same time as the publication of the Panel's report, focusing on why they felt that the candidate did in fact meet the minimum standards for the post.

2.14 Further detailed information on the process for confirmation hearing is available from the Local Government Association Publication, which as been attached as Appendix 3 to this report.

3. Alternative Options Considered

3.1 There are no alternative options other than to hold a confirmation hearing as required by legislation.

4. Implications

4.1 Appendix 1 sets out the relevant implications considered in the preparation of this report.

5. Consultation

5.1 Not applicable.

6. Background Papers

6.1 None identified.

7. Appendices

7.1 Appendix 1 – Implications.

7.2 Appendix 2 - Report from the Policer and Crime Commissioner

7.3 Local Government Association Guidance - Police and Crime Panels, Guidance on Confirmation Hearings

8. Recommendations

That the Panel:

Conducts a Confirmation Hearing for the post of Deputy Police and Crime Commissioner for Derbyshire in accordance with the procedure detailed in the report.

9. Reasons for Recommendation(s)

9.1 To ensure that the Police and Crime Panel conducts the required Confirmation Hearing correctly and in accordance with legislation.

Report Author:

Alec Dubberley **Contact details:** alec.dubberley@derbyshire.gov.uk

Appendix 1

Implications

Financial

1.1 None directly arising out of this report.

Legal

2.1 Legal implications are discussed in the body of the report

Human Resources

3.1 None directly arising out of this report.

Information Technology

4.1 None directly arising out of this report.

Equalities Impact

5.1 None directly arising out of this report.

Corporate objectives and priorities for change

6.1 None directly arising out of this report.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None directly arising out of this report.

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POLICE AND CRIME PANEL MEETING

REPORT TITLE	APPOINTMENT OF THE DEPUTY POLICE AND CRIME COMMISSIONER FOR DERBYSHIRE
REPORT OF	POLICE AND CRIME COMMISSIONER FOR DERBYSHIRE
DATE	11th MAY 2023

1. PUPOSE OF REPORT

- 1.1. The purpose of this report is for the Police and Crime Commissioner for Derbyshire ('the Commissioner') to notify the Derbyshire Police and Crime Panel ('the Panel') under the Police Reform and Social Responsibility Act 2011 ('the Act') of the Commissioner's appointment of Robert Flatley as the Deputy Police and Crime Commissioner ('the Deputy Commissioner') for Derbyshire (also referred to in this report as 'the candidate').
- 1.2. Due to the recent announcement from government surrounding the anti-social behaviour action plan, and the work involved to implement the Commissioner's young people strategy, there has been an additional requirement with regards to the support needed to deliver against these areas of business.

- 1.3. In accordance with the Act this report provides the Panel with:
- a) The name of the person whom the Commissioner has appointed.
 - b) The criteria used to assess the suitability of the candidate for appointment.
 - c) Why the candidate satisfies those criteria, and
 - d) The terms and conditions on which the candidate is to be appointed.

2. LEGISLATIVE REQUIREMENTS

- 2.1 The appointment process for Deputy Commissioner is set down in the Act. The Deputy Commissioner is a member of the Commissioner's staff but the post is not politically restricted and as a result the Deputy Commissioner can carry out political activity on behalf of the Commissioner. Section 7 of the Local Government and Housing Act 1989 (Appointment of Staff on Merit) does not apply and therefore the post is not subject to the normal competitive employment processes. (All other posts within the Commissioner's office are politically restricted and subject to normal recruitment processes).
- 2.2 The Commissioner may arrange for the Deputy Commissioner to exercise any function of the Commissioner in accordance with the Act.
- 2.3 The Deputy Commissioner is required as a condition of their appointment to make a declaration of eligibility. A copy of the declaration form signed by Robert Flatley is attached at Appendix 1.
- 2.4 Under the Act the Panel must:
- Review the proposed appointment.
 - Hold a Confirmation Hearing in public
 - Make a report to the Commissioner on the appointment, which must include a recommendation to the Commissioner as to whether or not the candidate should be appointed and must publish their report.
- 2.5 Under the Act the Commissioner may accept or reject the Panel's recommendation as to whether or not the candidate should be appointed. The Commissioner then has to notify the Panel of the decision whether to accept or reject the recommendation.

3. HOW THE CANDIDATE SATISFIES THE CRITERIA

- (a) The name of the person whom the Commissioner is proposing to appoint
- 3.1 The Commissioner has appointed Robert Flatley as the Deputy Commissioner.
- 3.2 None of the disqualifications for appointment, as set out in Section 18(6) of the Act or Paragraphs 8(2) and 8(6) of Schedule 1 of the Act, apply to Robert Flatley, in that he is not:
- A member of the House of Commons, the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly or the European Parliament.
 - A police officer, a Special, a member of police staff, or Police and Crime Commissioner staff, or a member of staff of certain national policing bodies, or the City of London Police Authority.
 - A British citizen, having been declared bankrupt, having been convicted of any imprisonable offence in the United Kingdom, Channel Islands or Isle of Man, or committed corrupt or illegal elections practice.
- (b) The criteria used to assess the suitability of the candidate for appointment
- 3.3 The appointment of a Deputy Commissioner will provide enhanced capacity for the Commissioner to deliver her Police and Crime for Derbyshire 2021-2025 ('the Plan'). The role incorporates statutory functions, which the Commissioner may decide that Robert Flatley can undertake in supporting her. In addition, the role has been shaped to capitalise on the knowledge, skills and experience that he can bring to assist the Commissioner and her team in the delivery of the Plan.
- 3.4 The job description for the post of Deputy Commissioner is provided at Appendix 2.

(c) Why the candidate satisfies those criteria

3.5 The Commissioner has provided the following statement in relation to the appointment of Robert Flatley as Deputy Commissioner:

The role of Deputy Commissioner is one of significant responsibility and covers a wide range of duties deputising for me in interactions with the Force, with partners and others in order to support the delivery of the Police and Crime plan and the discharge of my statutory functions.

In deciding upon Mr Flatley to undertake the role, I considered a number of points.

I will require my Deputy Commissioner to deputise for me in a range of formal and informal meetings and due to the nature of some of these, his experience as an elected representative as a County Councillor and his local knowledge of local government will be of significant value. In addition, I have known Mr Flatley for a number of years. His commitment to representing one of the most deprived areas in the County and getting the best for his residents is commendable. It shows a real understanding of the important role that elected representatives have in serving the public.

I will require my Deputy Commissioner to take the lead in a number of areas to aid delivery of my Police and Crime Plan as well as support and challenge the Force to improve performance. The work that Mr Flatley has formally undertaken in his cabinet position for Derbyshire County Council, which involved challenging the senior leadership of the local authority in an appropriate way, will be of particular importance in achieving these goals.

In addition to these important attributes, in my role as Commissioner, I have built a constructive working relationship with Mr Flatley over a number of years. I am confident that this will undoubtedly provide a strong basis for a productive relationship as Commissioner and Deputy Commissioner.

(d) Terms and Conditions of Appointment

3.6 A summary of the terms and conditions relating to the proposed appointment of the Deputy Commissioner are provided at Appendix 3. The terms and conditions relate to this appointment and for this term only and may not be the same terms and conditions agreed for any future appointment of a Deputy Commissioner.

4. **BACKGROUND DOCUMENTS**

Police Reform and Social Responsibility Act 2011
<http://www.legislation.gov.uk/ukpga/2011/13/contents>

The Policing Protocol Order 2011
<https://www.legislation.gov.uk/uksi/2011/2744/made>

5. ATTACHEMENTS

Appendix 1 – Robert Flatley’s Declaration of Eligibility

Appendix 2 – Job Description for the Deputy Police and Crime Commissioner

Appendix 3 – Summary of the terms and conditions

CONTACT FOR ENQUIRIES

Name:	Joe Rhodes-Orwin
Tel:	0300 122 6000
Email	pccoffice@derbyshire.police.uk



Derbyshire Police and Crime Commissioner

*Protecting Communities,
Fighting Crime*



THE DEPUTY POLICE AND CRIME COMMISSIONER FOR DERBYSHIRE

Declaration

I ROBERT FLATLEY.....

declare that I am aware of the provisions of the Police Reform and Social Responsibility Act 2011 and to the best of my knowledge and belief I am eligible for appointment as Deputy Police and Crime Commissioner for Derbyshire, and I am not subject to a relevant disqualification.

I acknowledge that I hold office subject to the requirements of paragraph 8 of Schedule 1 to the Police Reform and Social Responsibility Act 2011.

Signed 

Date: 18/04/2023.....



Protecting Communities,
Fighting Crime

Role title:	Deputy Police & Crime Commissioner
Grade & salary:	Fixed salary - £30,000 (per annum)
Working hours/shift pattern:	37 per week
Department:	Office of the Police and Crime Commissioner
Location:	Force Headquarters, Ripley
Post reports to:	Chief Operating Officer
Suitable for job share or part time:	No

Overview of Role:

To support the Police and Crime Commissioner for Derbyshire, (the Commissioner), in the delivery of her manifesto commitments and in the delivery of the Police and Crime Plan for Derbyshire.

Job Description & Objectives:

The Deputy Commissioner will carry out such duties and responsibilities as are allocated by the Commissioner. These may include, but are not limited to, the following areas:

- Attend meetings on behalf of the Commissioner as directed and deputise for the Commissioner where required
- Assist the Commissioner to deliver her Young People Strategy
- Undertake research and provide summaries of key issues for the Commissioner
- Assist the Commissioner in the design and implementation of her new anti-social behaviour restorative justice scheme
- Prepare thematic or topical policy papers to inform long-term policy considerations for the Commissioner
- Contribute to policy planning, including ideas which extend the existing range of options available to the Commissioner
- Review papers going to the Commissioner (including for future meetings), drawing attention to any political implications, and ensure that sensitive political issues are handled appropriately
- Assist with briefing MPs and officials on relevant business areas within the Commissioner's Police and Crime Plan
- Assist the Commissioner with public engagement activities
- Liaise with outside interest groups
- Collate the opinions of interest groups and partner organisations and present these to the Commissioner together with any recommendations
- Represent the views of the Commissioner to the media when authorised by the Commissioner to do so



Derbyshire Police and Crime Commissioner

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THE DEPUTY POLICE AND CRIME COMMISSIONER

SUMMARY OF TERMS AND CONDITIONS OF APPOINTMENT

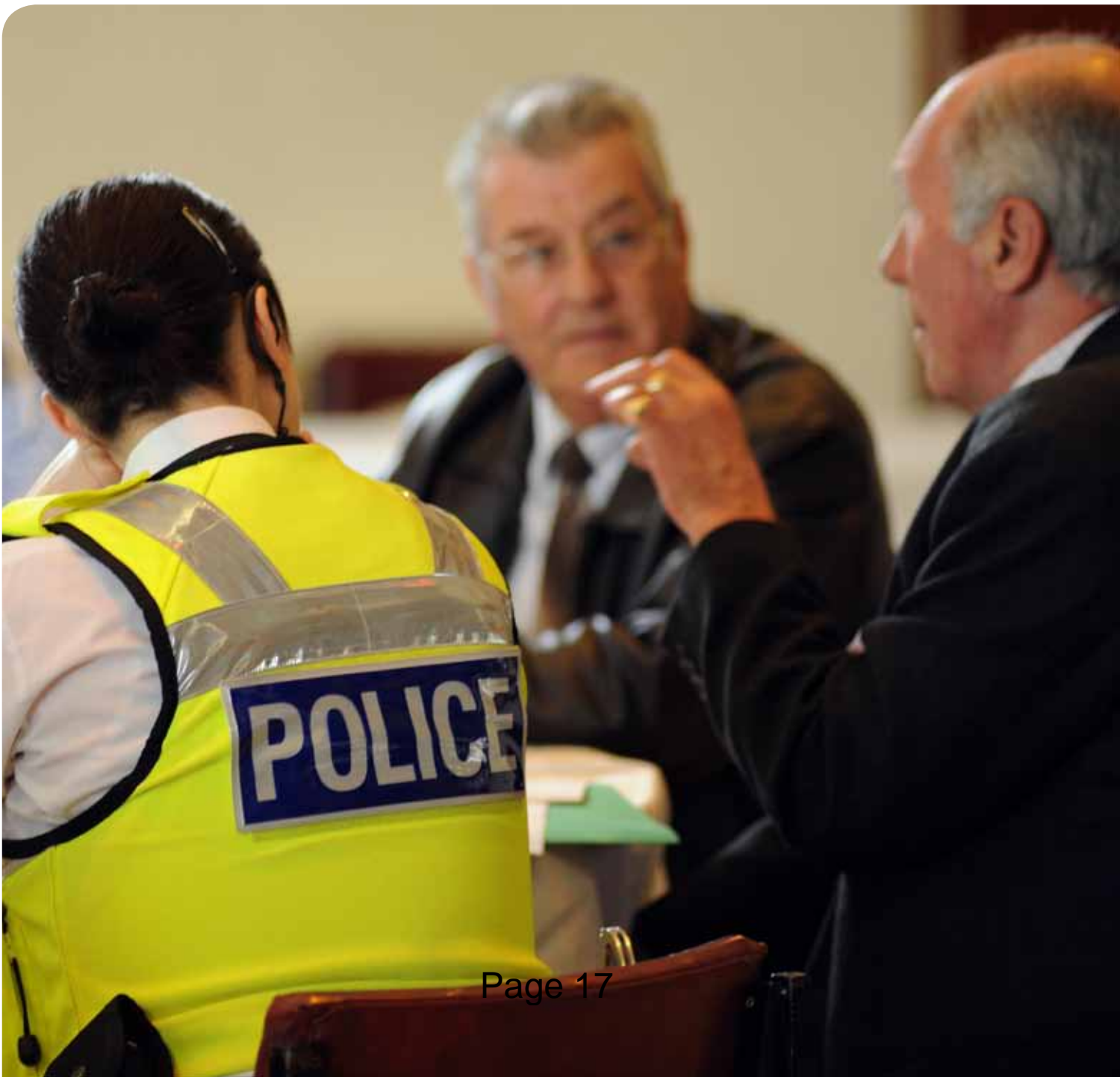
1. Under Section 18(10) of the Police Reform and Social Responsibility Act 2011 ('the Act') the Deputy Police and Crime Commissioner ('the Deputy Commissioner') is a member of the Police and Crime Commissioner's staff.
2. The Deputy Commissioner will be employed by the Police and Crime Commissioner ('the Commissioner') and be subject to a contract of employment which will generally reflect the terms and conditions applying to the Commissioner's staff. However, this post is not a politically restricted post within the terms of the Local Government and Housing Act 1989 and Local Government (Political Restrictions) Regulations 1990.
3. The delegated functional responsibilities of the post and associated terms and conditions will be subject to review at the discretion of the Commissioner.
4. Notwithstanding the above, the main terms and conditions of appointment are set out below:

Commencement	18 th April 2023
Term of Contract	The appointment will be a fixed term contract and is expected to end upon the Commissioner reaching the end of her current term of office in May 2024.
Place of Work	The post will be based in the Commissioner's Office, Police HQ Ripley, DE5 3RS The Deputy Commissioner will also work from home and may be required to work in other venues across Derbyshire from time to time.
Hours of Work	37 hours per week. The Deputy Commissioner will be required to work outside normal office hours, including weekends and evenings as the role requires. No overtime will be paid.
Basic Salary	£30,000 per annum
Allowances	Travel and subsistence allowances will be paid at the rates applicable to the Commissioner.

	Allowances paid to the Deputy Commissioner shall be disclosed under the requirements of the Elected Local Policing Bodies (Specified Information) Order 2012 (as amended).
Pension Scheme	The Deputy Commissioner will be entitled to join the Local Government Pension Scheme.
Continuous Service	No employment with a previous employer will count towards the period of employment with the Commissioner.
Redundancy	In accordance with statutory requirements.
Annual leave	24 days annual leave per year, plus public holidays.
Sick Pay	The Deputy Commissioner will be entitled to sick pay as follows: During the first year of service – one month's full pay and (after four months' service) two months' half pay During the second year of service – two months' full pay and two months' half pay
Period of Notice and Termination of Contract	The Deputy Commissioner may bring their employment with the Commissioner to an end at any time by giving a month's notice in writing. The Commissioner may bring the Deputy Commissioner's employment to an end by giving one month's written notice. Following an ordinary election for a Commissioner, the Deputy Commissioner's term of office will end no later than six days after the election (that is, the day on which the term of office of the appointing Commissioner would, if there were no vacancy in the office before then, end). Where a by-election is called due to a vacancy in the office of the Commissioner, the Deputy Commissioner's term of office will terminate on the making and delivering of the declaration of acceptance of office by the newly elected Commissioner.
Conduct	The Deputy Commissioner will be a signatory to, and will abide by, the Commissioner/Deputy Commissioner Code of Conduct and will be subject to the complaint process under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012.
Confidentiality	The post of Deputy Commissioner and appointed post-holder will be subject to the Official Secrets Act.
Vetting	The post of Deputy Commissioner is excluded from vetting as it is a political position, is deemed a Crown Servant and Parliament has agreed that this role should not be subject to police vetting.

Police and crime panels

Guidance on confirmation hearings



This guidance has been prepared by the Centre for Public Scrutiny and the Local Government Association. Every attempt has been made to provide a fair picture of the current state of the law, to present an accurate and comprehensive assessment of our recommended interpretation of the provisions of the Police Reform and Social Responsibility Act 2011 as it applies to police and crime panels, and to suggest ways of working to ensure that panels can be effective, and their work proportionate, relevant and timely. However:

- This guidance should not be relied upon as giving legal advice, and it will be for monitoring officers in individual authorities to come to their own decisions, working with councillors, to decide on the right approach.
- This guidance should not be interpreted as setting out the view of the Home Office, and the recommendations, suggestions and advice given should not be interpreted as being endorsed or approved by the Home Office. The views expressed in the guidance are those solely of the Centre for Public Scrutiny and the Local Government Association.

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Introduction

Background

From November 2012, structural reforms in policing in England and Wales will result in the abolition of police authorities and the creation of new arrangements for accountability. The Police Reform and Social Responsibility Act¹ creates the post of elected police and crime commissioner (PCC) for each force area, who will be responsible for holding the chief constable to account. The PCC themselves will be scrutinised by a police and crime panel (referred to in this guidance as the panel) made up of local councillors from the force area, and some co-optees. More details on the general role of the panel can be found in the companion guidance to this publication produced by LGA/CfPS in October 2011².

Under the Act³, a principal role for the new panels will be to conduct hearings for certain senior staff including the chief constable, before they are confirmed in their posts. There is little precedent for this activity in the context of local government, with the most prominent UK examples of such hearings being in the House of Commons, and the London Assembly. Even there, they are a relatively recent phenomenon.

Under the Act, a Part 2 panel operates as a local government joint committee, led by a host authority. Under Part 3, the Secretary of State reserves the right to run a panel directly where local agreement on its operation cannot be reached. All Welsh panels will be Part 3 panels. Support for the operation of Part 3 panels will be provided by the Home Office. However, it is not anticipated that there will be any material difference between Part 2 and Part 3 panels in their operation of confirmation hearings.

Key issues

Confirmation hearings will need to be handled in a different way to other evidence-gathering sessions. They will however need to operate within the requirement, in employment law, for a particular degree of fairness. They will be an important element of an appointment process that will need to focus closely on an individual's capabilities and expertise, but will need to be carried out so as to ensure that justified scrutiny of these attributes does not descend into unwarranted intrusion or lines of questioning that might be unfair or unreasonable.

¹ Referred to in this guidance as 'the Act'

² www.cfps.org.uk/publications?item=7002&offset=0%20

³ Schedules 1 and 8

Confirmation hearings will need to complement, rather than duplicate, the other internal systems for appointing staff. There is no point in a panel confirmation hearing being simply a restaging of a previous interview panel.

Lines of questioning will therefore need to be carefully designed, and used to get the maximum value out of the process – for the panel, candidate and for the local community.

This guidance will examine in detail the steps that local authorities, and the panels they support, should take in preparing for confirmation hearings and in carrying them out. There are clear pitfalls that careful planning can avoid, but inevitably there will be occasions where quick thinking, tact and diplomacy will be required from all involved in these hearings, to ensure that they are genuinely useful.

We suggest that PCCs and panels in individual force areas review this guidance and seek to incorporate it as part of any wider protocol that will govern their relationship. This would include, for example:

- timescales (supplementing and complementing existing provisions on timescales in Schedules 1 and 8)
- mutual expectations about the detail of information which will be provided on candidates and their background
- mutual expectations about the conduct of the hearings themselves.

Reaching agreement on these issues as soon as possible following the election of the PCC will minimise the risk of delay or misunderstandings when the first Schedule 1 or Schedule 8 appointment is scrutinised. The panel should have the systems in place ready to carry out its duties from November 2012.

Drawing comparisons

Experience of hearings elsewhere

UK examples of confirmation hearings can be drawn from the House of Commons, where they have operated since 2008, and from processes established in relation to the London Assembly, which has a role in confirming certain mayoral appointments.

In the USA, a number of local areas run confirmation hearings for police officials, especially where they are appointed by an elected commissioner or chief of police.

Research elsewhere has explored these confirmation hearings and a discussion of their strengths and weaknesses goes beyond the scope of this guidance; however, we have sought to recognise the experience in the US and other jurisdictions in this document.

In the UK, confirmation hearings (or 'pre-appointment hearings'⁴) were initially proposed by government as part of the 2007 Governance of Britain Green Paper.

A process of negotiation between the government and the Commons Liaison Committee⁵ led to the adoption of a process in 2008 that focused on the professional competence and personal independence of candidates, covering a range of public appointments. The Liaison Committee produced a process for hearings which has been adopted and followed by all select committees and, since 2008, significant numbers have been carried out.

In 2010, the Constitution Unit carried out a review of confirmation hearings that had been held to date⁶. It highlighted some concerns about the operation of such procedures but overall concluded that the aim of increasing transparency in appointments had been achieved.

On the point of the exercise of a veto (not an option open to Select Committees) it has been suggested that this might deter candidates from applying. This is a risk we will consider and suggest a way to mitigate, through panels carefully restricting their use of the veto, which we discuss in more detail below.

⁴ Schedules 1 and 8 of the Act make clear that the confirmation hearing process is a pre-appointment, rather than a post-appointment, process.

⁵ Maer L, 'Parliamentary involvement in public appointments' (House of Commons Library Paper SN/PC/4387), <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-04387.pdf>

⁶ Waller, P and Chalmers M, "An evaluation of pre-appointment scrutiny hearings" (UCL Constitution Unit, 2010), <http://www.ucl.ac.uk/constitution-unit/research/consultancy/consultancy-projects/PASreport>

Lessons learned

There are several lessons that can be learned from the experiences in the UK Parliament, in the USA and at the London Assembly:

- Confirmation hearings need to be rigorously and carefully planned by the panels carrying them out – but this does not mean hearings are a bureaucratic, ‘tick box’ exercise.
- Candidates need to know what to expect and panels should keep to a relatively narrow set of questions which relate directly to professional competence and personal independence – but this does not mean hearings are not challenging.
- Both the veto (where legal), and the recommendation not to appoint, should be used very rarely, based on the principle that candidates will have already been subject to an internal recruitment process – but this does not mean that hearings are simply a rubber stamp.
- Hearings should take place quickly, with minimal time taken between notification of the appointment, the hearing and reports and recommendations being made to the PCC – but this does not mean the process should be rushed.
- Candidates should be treated with courtesy and respect, not just at hearings themselves, but also in correspondence or public statements relating to recommendations made by the panel (this is particularly important if there is a decision taken to veto) – but this does not mean that panels should not be transparent about their findings.

The legislation – initial considerations

Scope

Scrutiny of senior appointments by the police and crime panel is determined in Schedules 1 and 8 of the Act. These Schedules provide information on what the panel must do, in holding a confirmation hearing.

The rest of this guidance provides details on how these obligations could be interpreted, and how confirmation hearings could be used to add value to local policing. Throughout the guidance we have used the word ‘should’ to put forward how we would suggest that panels should plan their work. There is however no legal obligation on any panel to follow our recommendations.

Schedule 1

Schedule 1 covers the appointment of the PCC’s chief executive, chief finance officer and any deputy police and crime commissioners⁷. It states that the PCC must notify the panel of such a ‘proposed senior appointment’⁸, providing the name of the candidate, the criteria used to assess his or her suitability, why the candidate satisfies those criteria, and the terms and conditions on which the candidate is to be appointed⁹.

Once this notification has occurred, the panel must review the senior appointment¹⁰, and make a report on it to the PCC¹¹, which must include a recommendation as to whether or not the candidate should be appointed¹².

This must all happen within a period of three weeks, beginning on the day that the panel receives the notification from the PCC¹³. Under Schedule 6 to the Act, confirmation hearings carried out under Schedule 1 are ‘special functions’ of the panel, and so may not be discharged by a sub-committee.

A confirmation hearing must be held before the report is submitted to the PCC. This is defined as ‘a meeting of the panel, held in public, at which the candidate is requested to appear for the purpose of answering questions relating to the appointment’¹⁴.

In response to the panel’s report, the PCC must then notify the panel whether they will accept or reject the recommendation¹⁵. There is no duty for the PCC to give reasons for their decision.

⁷ Paragraph 9(1) of Schedule 1

⁸ Paragraph 9(2) of Schedule 1

⁹ This will include the candidate’s salary

¹⁰ Paragraph 10(2) of Schedule 1

¹¹ Paragraph 10(3) of Schedule 1

¹² Paragraph 10(4) of Schedule 1

¹³ Paragraph 10(5) of Schedule 1

¹⁴ Paragraph 11(2) of Schedule 1

¹⁵ Paragraph 12(1) and (2) of Schedule 1

Schedule 8

Schedule 8 covers the appointment of the chief constable. Most of the provisions are identical to those in Schedule 1. There are two crucial differences:

- The panel has a veto¹⁶ over the appointment of the chief constable. The panel may recommend that the PCC does not make the appointment¹⁷, but in the event of a veto then the candidate must not be appointed¹⁸. What happens once the veto has been exercised will be subject to regulations¹⁹, which are likely to go into this matter in more detail. The procedure suggested at the end of this document for the exercise of the veto has been designed so that it should fit with the regulations once they are published.
- Although the panel is obliged to conduct a confirmation hearing for the chief constable and then report its recommendations to the PCC, if a report is not made following a period of three weeks, then the PCC can go ahead and appoint²⁰.

It should also be noted that the panel cannot delegate its scrutiny of the appointment of the chief constable to a sub-committee, as it is a 'special function' of the panel under Paragraph 27 of Schedule 6.

In this guidance, we will refer to appointments of the chief constable as **Schedule 8 appointments**. All other appointments subject to a confirmation hearing under the Act will be referred to as **Schedule 1 appointments**.

¹⁶ Under the Act, the panel may veto such an appointment with a two-thirds majority

¹⁷ Regulation 4(4) of Schedule 8

¹⁸ Paragraph 8 of Schedule 8

¹⁹ Paragraph 9 and 10 of Schedule 8 (Regulations to be issued)

²⁰ Paragraphs 2(3) and 6(1) of Schedule 8

Existing staff

Some staff may be transferred, via TUPE, from police authorities to the PCC's secretariat. Even if under normal circumstances such transfers would be subject to a hearing, this would not be necessary during the November 2012 transition phase when the PCC's secretariat is first being established. However, the appointment by the PCC of a deputy will require a confirmation hearing to be held.

Professional competence and personal independence

We recommend that confirmation hearings focus on issues of **professional competence and personal independence**.

These are the standards that have been adopted in the House of Commons and have been identified by MPs as providing them with the focus necessary to carry out effective confirmation hearings.

Minimum standards should be seen as applying to particular attributes; ie there should be minimum standards below which it would not be appropriate to appoint under any circumstances. Above this bar, the panel might have concerns but the candidate will be 'appointable' subject to the discretion of the PCC. We comment on minimum standards in more detail in the section on the exercise of the veto.

Professional competence relates to a candidate's ability to carry out the role. This should be apparent from a comparison of the candidate's CV and the role profile, and from the answers to questions which relate to (for example) issues around professional judgment and insight which might be asked as part of the confirmation hearing process.

Personal independence relates to the need for a candidate to act in a manner that is operationally independent of the PCC (although see below on how this will apply to deputy commissioners).

This will be particularly important for Schedule 8 candidates, but for Schedule 1 candidates the panel will still need to assure themselves that the candidate will have the ability to advise the PCC effectively, and to understand the need to respond constructively in situations when they might be held to account by the panel.

Planning and preparation

Receiving notification from the PCC

When the PCC notifies the panel of a proposed senior appointment, the panel will need information relating to the candidate in order to carry out the hearing properly.

Notification from the PCC should therefore be accompanied by some form of background information (to minimise the risk that time will be wasted chasing this information up through other means). This should usually be the same information that the PCC has had access to during the rest of the appointment process. Under the Act the panel **must** be provided with the following information:

- the names of the person whom the PCC is proposing to appoint
- the criteria used to assess the suitability of the candidate for the appointment
- why the candidate satisfies those criteria
- the terms and conditions on which the candidate is to be appointed.

The PCC might provide other information about the candidate, for example background information (such as a CV) or a personal statement.

This information would be used to allow the panel to draw together questions around whether the candidate could evidence both **professional competence and personal**

independence. It is unlikely that the panel would be able to, or would wish to, carry out its own research on the candidate within the three week timescale because:

- resource constraints would make this level of research unfeasible
- this raises the prospect of questions being asked on issues which do not relate to professional competence and personal independence.

The issue of additional information is covered in the section on pre-meetings below.

Given that notification triggers a hearing within three weeks, the first task for the panel on receiving the notification will be to set a date for a meeting. This meeting should not be used for any other business (ie if there is already a panel business meeting scheduled for that period, the appointment meeting should be held separately).

Notifying the candidate

Following the PCC's notification to the panel, and the scheduling of the hearing, the chair of the panel should write to the candidate, advising them of the date of the meeting and notifying them of the principles of professional competence and personal independence on which they propose to evaluate the candidate.

This should refer to the relevant provisions in legislation.

This letter should advise that the information provided by the candidate (see above) would need to be put on public deposit in the same manner as a standard report going to the panel.

If it has been agreed that the candidate's references will be provided to the panel, the PCC will need to advise the relevant referees that the references they submit will be put on public deposit to assist the panel in the performance of its duties.

Briefing and pre-meeting

Steps should be taken to arrange a pre-meeting for the panel to go through some of the key issues and possible questions. The pre-meeting should not be held immediately before the confirmation hearing itself, to allow sufficient time for any unexpected issues, or gaps in information provided, to be addressed.

The information provided alongside the notification by the PCC should be used by the chair of the panel and the lead officer supporting the panel to draw together a list of potential issues for the panel to discuss at a pre-meeting. This could highlight possible question topics and themes, highlight background information on which members might wish to focus and remind members of the process taken at the meeting itself.

The pre-meeting is the most important element of the preparations for the confirmation process, because it is here that members of the panel will decide on the scope and thrust of their questioning.

This meeting should be held in private, and members of the panel should be assisted by the monitoring officer and a senior HR representative from the host authority to provide specialist and technical advice, along with whichever officer is responsible for providing support to the panel (ie a scrutiny officer).

People serving on panels may already have some experience of councillor-level appointment panels, for example to fill senior management posts. However, confirmation hearings are different in several crucial ways, which require them to be managed even more carefully. The panel will need to bear these factors in mind at the pre-meeting:

- confirmation hearings will be held in public, and Schedule 8 appointments (those of the chief constable) in particular are likely to be high profile
- the appointment is being made to an external body, not the councils represented on the panel
- hearings are an integral, but independent, part of the appointments process.

The focus of questioning will, therefore, need to rest on the professional competence of the candidate and their personal independence. Questioning will need to rely on the documents provided to support the panel's deliberations.

Where members of the panel propose to consider additional information relating to the candidate, not provided by the PCC but available elsewhere, this should be considered by the monitoring officer and the HR representative to ensure that the process will be fair, and that it will help the panel assess competence and independence.

This will be of particular importance for Schedule 8 appointments, where there may be a fair amount of information in the public domain relating to the candidate on which the panel might like to draw, but care will be needed in researching and analysing this information.

Within the two broad themes of competence and independence the panel might wish to focus on particular areas. These should be discerned with reference to the role profile, and the police and crime plan, which will allow the panel to understand the regular duties that the postholder will be expected to undertake, and the key policies that they will have to implement.

Broad questioning themes should be developed, such as evidence that the candidate has:

- an understanding of the various stakeholders that would need to be involved and engaged with (and in what way, with what outcome) in the development and delivery of a major strategy (professional competence)
- a pragmatic understanding of the separation of the PCC from operational responsibility (personal independence).

Personal independence is likely to be a nuanced issue in relation to the PCC's deputy. These are likely to be political appointments, and as such a lower standard of independence might be expected, reflecting the fact that these deputies have been appointed to provide political support, and to directly assist the PCC in driving his or her particular vision and priorities.

However, the panel in these cases, will still need to be assured that the deputy recognises the separation of political and operational responsibilities.

Members of the panel should consider, at the pre-meeting, the kind of evidence they would want to adduce to demonstrate under each theme that the minimum standards for the post had been met.

Under each of these themes individual questions should be drawn out, and assigned to relevant members of the panel. It may be necessary for the panel member asking questions at the meeting to ask supplementary questions, to 'tease out' the response to an answer. The chair of the panel will, under these circumstances, need to monitor closely such supplementary questions, and their responses, to be assured that they are relevant. The chair should receive senior officer support at the meeting.

Inappropriate questions are considered below.

The hearing itself

The hearing will be a relatively focused opportunity to explore key issues relating to professional competence and personal independence.

As we have made clear it should not be treated as a chance for the panel to explore the candidate's views on various areas of the PCC's policies, national policy issues, or their plans once they assume the post, except insofar as those questions might relate directly to professional competence and personal independence.

Confirmation hearings should therefore be relatively short and focused. Members will have agreed questions, and questioning themes, at the pre-meeting and these should be kept to (other than to ask necessary supplementary questions – see above).

In broad terms, the meeting should be framed so as to allow the panel to make an informed decision about the candidate. In the next section the decision-making process is looked at in more detail but, fundamentally, it comprises two linked steps:

- Does the person meet the criteria set out in the role profile for the post?
 - Do they have the professional competence to carry out the role?
 - Do they have the personal independence to carry out the role? (although see comments elsewhere in this guidance on political appointments)

- Should, consequently, the panel recommend that the candidate should not be appointed or use its power of veto?

The chair should open the meeting by welcoming the candidate, and others present, and outlining for the benefit of the candidate the key themes that the panel hopes to explore. The chair should explain the process for approval, refusal or veto of appointments and allow the candidate to ask any procedural questions that he or she might have before the questioning gets under way.

The chair should be aware – notwithstanding the pre-meeting – of the risk that inappropriate questions might be asked. An inappropriate question is one that does not relate to the professional competence or personal independence of the candidate. Some questions that may appear to the questioner to relate to one or both of these issues might still be inappropriate. Some examples might be questions:

- relating to the personal political (or other) views of the candidate – eg whether the candidate agrees or disagrees with the police and crime plan, and so on
- seeking to substantively hold to account the candidate for decisions made in a previous role, unless they are phrased in such a way that directly relates to (for example) learning lessons from past experience

- on what the candidate will do, substantively, once in the post (ie questions relating to operational strategy)
- which are hypothetical and designed to obtain the candidate's views on a position of local controversy.

This is not an exhaustive list. The panel's senior HR adviser will be able to further advise the panel and the chair as to appropriate, and inappropriate, questions in this context.

The panel should also be able to use its own considered judgment on this matter, and does not have to take the officer advice it is given.

At all times the candidate should be treated fairly and politely. The panel should avoid getting into debate and discussion with the candidate on any issue, remembering that it has a task to perform and a limited amount of time to do it.

Members of the panel should refrain from making general statements about any issue, other than the short opening and closing statements referred to above.

At the end of the session the candidate should be given the opportunity to clarify any answers that he or she has given in the course of the hearing, and ask any questions of the panel, for example about the next steps or the decision-making process.

The decision-making process

Immediately following the confirmation hearing, the panel should go into closed session to decide on its recommendations. Whilst the Local Government Act 1972 Schedule 12A would normally apply to the panel's operation at this point, the Home Office suggests that panels are joint committees under the Police Reform and Social Responsibility Act rather than the Local Government Act 1972. The Home Office will shortly issue Regulations to clarify how parts of the 1972 Act will apply to panels. The monitoring officer and a senior HR professional should be present to provide advice to the panel on its deliberations.

Meeting the role profile requirements

The following questions follow on from the issues mentioned in the section above. They are indicative only, suggesting the kind of issues that the panel would most need to be able to evaluate in order to come to a judgment on the suitability of the candidate.

Depending on the role, and the role profile, different questions could be asked specific to the candidate's forthcoming responsibilities, for example:

- Whether the panel feels that the candidate has the professional competence to exercise the role, as set out in the role profile
 - Do they have the ability and insight to work across multiple different agencies to achieve the PCC's priorities, and wider priorities for the area?
 - Do they have the ability to respond, credibly and proportionately, to pressures such as the need to make short-term responses to unexpected requirements?
 - Do they have the ability to translate strategic objectives into operational change on the ground?
- Whether the panel feels that the candidate has the personal independence to exercise the role, as set out in the role profile
 - Do they have the ability to advise the PCC, but to resist any attempt at improper influence?
 - Do they have the ability and confidence to take personal responsibility for relevant successes and failures?

Minimum standards

In an earlier section we made reference to 'minimum standards' of professional competence and personal independence. Members should be familiar with the required minimum standards in the role profile and should use these to make an assessment as to whether the candidate fulfils those standards.

Where a candidate does not meet these standards it should be self-evident, and this will be suggestive of a significant failure in the appointments process undertaken by the PCC.

Under these circumstances (and only these circumstances) it may be appropriate to use the veto, if the candidate is a Schedule 8 appointment.

Where a candidate meets these standards, but there is still a cause for concern about his or her suitability, it may be appropriate to outline these concerns in the panel's response to the PCC.

Where a Schedule 1 candidate does not, in the panel's view, meet the minimum requirements for the post, providing advice to the PCC in the form of a letter is the only option open to the panel. For these situations for Schedule 8 candidates, making a recommendation provides an alternative to use of the veto.

Making recommendations on Schedule 1 and Schedule 8 appointments

Under the Act the panel may recommend to the PCC that the appointment be made, or that it not be made. A recommendation that an appointment is not made is not the same as a veto, and the PCC can, if he or she chooses, ignore such a recommendation.

The only example of a pre-appointment hearing in the Commons leading to a recommendation not to appoint was that of the proposed children's commissioner. In this section, we will draw lessons from that experience and examine how a process for recommending approval, and rejection, might work in practice.

It is important to appreciate that any negative determination by the panel could have an undesirable effect on the candidate's career options. It is suggested therefore that the affected candidate should ideally have at least a few days to consider their position and ask any further questions they may have about the process before information is released to the press and general public.

To achieve this, it is suggested that a five working day period should elapse between the hearing and the release of information about ANY recommendation from the panel whether positive or otherwise.

An understanding about this arrangement would need to be discussed and agreed with the PCC and their staff who might otherwise release information about appointments separately from the panel.

Delaying any announcement about favourable panel recommendations and associated appointment announcements would be necessary to avoid unfavourable recommendations becoming automatically associated with a delay. This would in effect create the same outcome for unfavourable recommendations as if the information had been released straight away.

Although the five day period is suggested in order to ensure fairness to the candidate, it is recognised that there may be some circumstances where their best interest would be served by a quicker release of information. In all cases, a consistent approach to the release of information would need to be discussed and agreed with the PCC and their staff.

Recommending approval

This will be straightforward. The Act requires that recommendations to appoint should be communicated to the PCC in writing. This should happen immediately following the making of the decision (ie the next working day).

The candidate should be copied into the communication. It is suggested however that the PCC should be asked not to make the result of the appointment public until five days has elapsed following the date of the hearing for the reasons explained above.

Similarly the panel should wait five working days before it releases any information about its recommendations. In any event the panel should also ensure that the PCC has received and acknowledged the panel's recommendations before making its recommendations public.

Recommending refusal

This will involve more work. Refusal should only be recommended rarely, under the circumstances identified in the section on the decision-making process.

Where refusal is recommended, on the next working day the PCC should be notified of the refusal in writing. Appended to the refusal should be a summary of the principal reasons for that refusal.

Both should be treated as separate documents so that the letter recommending refusal can later be formally published without risking a breach of the Data Protection Act.

The next four working days will be available to all parties – including the candidate – to consider their next moves before the recommendation is made public. The reason why we suggest that no information be disseminated publicly until after this time is to ensure that the process is fair to the candidate as explained above.

There are three likely scenarios that might follow a refusal recommendation by the panel:

- The PCC continues with the appointment. If this happens the recommendation to refuse would be published after five working days, along with a summary as to why the recommendation was made. The PCC should make a response at the same time as the publication of the recommendation, focusing on why he/she felt that the candidate did in fact meet the minimum standards for the post.
- The candidate decides to withdraw. If this happens the recommendation to refuse would be published after five working days along with the relevant summary, but no further information would be published from either side.
- The PCC decides not to appoint. If this happens, the recommendation to refuse, and the summary, would be published alongside a statement by the PCC setting out a timetable and process to make a new appointment.

At each point the candidate will need to liaise with the PCC. The panel should not attempt to liaise with the candidate either directly, or through the host authority's monitoring officer or leading HR officer.

The panel may wish to recommend refusal, rather than exercising the veto, in the case of a Schedule 8 appointment.

This might be considered when the panel feels that the candidate essentially meets the minimum standards, but has shortcomings that mean it would be inappropriate to appoint. It is envisaged that the veto would only be used in exceptional situations.

The veto (for Schedule 8 appointments only)

Use of the power of veto

In an earlier section we considered the effect that the veto might have on potential candidates for the role of chief constable. Research carried out by the Constitution Unit in 2010 concluded that the introduction of a veto into the existing system of select committee pre-appointment hearings might well act to dissuade candidates from coming forward.

It should be recognised that the PCC's power to appoint – subject to the confirmation hearings process – has been provided by the Government to allow the PCC to appoint the person thought most appropriate. This will be a corporate decision, led by the PCC as an individual, but backed up through their secretariat, whose HR functions and internal appointment procedures will provide a 'due diligence' check on the candidate's suitability. The veto should only be exercised where it is clear to the panel that there has been a significant failure of those 'due diligence' checks, to the extent that the candidate is not appointable. This is, rightly, a very high bar.

Systems and processes will therefore need to be designed to ensure that the veto is used extremely rarely. It should be used only where the panel feels that the candidate fails to make the minimum standards for the post.

Process for the veto

A possible process for the veto is set out below. In designing arrangements for the use of the veto, the content of any relevant Home Office Regulations should also be considered carefully²¹.

Where the veto is exercised on a Schedule 8 appointment, the PCC must not appoint. The veto should be notified to the PCC on the next working day following the hearing. The PCC will be responsible for notifying the candidate.

It is suggested that after five working days the panel will publish its veto and the PCC, alongside this information, will publish information setting out the steps that will be taken to make another appointment. As we have suggested for recommendations of refusal of appointments, the five day period following the hearing can be used by the relevant parties to consider their responses. If however the candidate's interests would be better served by a quicker release of information, this can be discussed and agreed with the PCC.

²¹ At the time of writing this guidance, the content of pending Home Office Regulations covering the use of the veto has not been finally determined. Early drafts of the Regulations indicate that the panel will not be able to veto the PCC's second choice of candidate if the panel has already used its veto on the previous candidate.

The exercise of the veto (or a recommendation for refusal) should act as the impetus to a discussion between the panel and PCC about how HR processes within the PCC's secretariat might be reviewed.



Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000

Fax 020 7664 3030

Email info@local.gov.uk

www.local.gov.uk

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For a copy in Braille, larger print or audio,
please contact us on 020 7664 3000.
We consider requests on an individual basis.