



**West Midlands
Combined Authority**

WMCA Board

Date	14 September 2018
Report title	Governance Review and Scheme for the transfer of the Police and Crime Commissioner Functions
Accountable Chief Executive	Deborah Cadman, West Midlands Combined Authority email: deborah.cadman@wmca.org.uk tel: (0121) 214 7200
Accountable Employee	Henry Kippin, Director of Public Service Reform email: henry.kippin@wmca.org.uk tel: (0121) 214 7880
Report has been considered by	Programme Board - 31 August 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Note progress on the development of the Governance Review and Scheme outlining the proposed model for Mayoral West Midlands Combined Authority (WMCA) governance of the West Midlands Police and Crime Commissioner (PCC) functions.
- (2) Request that this report and attached Governance Review and Scheme are considered by Constituent Authorities and the PCC in line with the requirement to elect a Mayor with PCC responsibilities in 2020, as agreed by the Board on 20th July 2018.
- (3) Agree to receive a further report at November 2018 WMCA Board detailing the outcome of the Constituent Councils and PCC consideration of the content of the Governance Review and Scheme, and setting out the public consultation process.

1. Purpose

- 1.1 To note the contents of the Governance Review (Appendix 1) and Scheme (Appendix 2) which enable the proposed Mayoral WMCA PCC governance model to be discussed and understood prior to seeking Constituent Council consideration, and to provide input to this model prior to public consultation.
- 1.2 To give assurance to the WMCA Board, PCC and regional stakeholders about the process to develop this Governance Review and Scheme; and that key issues raised through the development process have been addressed within the Governance Review, Scheme, and in this covering report.

2. Background

- 2.1 The second Devolution Deal for the West Midlands confirmed that, in addition to continuing the transfer of West Midlands Fire and Rescue Service governance to the WMCA, “the government, the CA 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”.
- 2.2 When considering the Devolution Deal on the 9th February 2018, the WMCA Board agreed that “the Government, West Midlands Combined Authority and the West Midlands Police and Crime Commissioner will enter into discussions with the Mayor regarding a governance model for incorporating the role and powers of the Police and 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 and Crime Commissioner”.
- 2.3 At the WMCA Board meeting of 20th July, the WMCA Board agreed to “the development of a Governance Review and Scheme to enable the proposed amalgamation of the functions of the West Midlands Police and Crime Commissioner into the Mayoralty for the elections to be held in 2020”.
- 2.4 It was further agreed that the Governance Review and Scheme be submitted at this Board meeting.
- 2.5 A working group comprising officers of the WMCA, Office of the West Midlands Police and Crime Commissioner (OPCC) and the Home Office (HO) has been working on these materials. Consultation has also taken place with the West Midlands Chief Constable (CC) and Finance Director, the Ministry for Housing, Communities and Local Government (MHCLG), and the Greater Manchester Combined Authority (GMCA). We have also taken advice from the Consultation Institute and sought independent legal counsel.
- 2.6 This report - and the Governance Review and Scheme attached - are the result of the above process. For clarity: the Governance review provides details of the existing governance arrangements, shows how these will evolve, and outlines the attendant assurances, governance arrangements and potential benefits. The Scheme outlines the draft legislative changes that will enable them.

2.7 Our working principle has been to ensure that we are open, collaborative and transparent; that we share draft workings within the tri-partite working group at different stages in the process; and that we do as much as we possibly can to ensure that feedback received from within the group and from wider stakeholders is incorporated.

3. Rationale

3.1 West Midlands Police (WMP) is the largest police force outside of London. It is a critical public service within region, and plays a significant role in national policing and counter-terrorism. The governance of policing with the region is in line with this profile. The PCC plays a key role securing the efficiency and effectiveness of the Force (under powers granted within the Police Reform and Social Responsibility Act 2011 which are outlined in the Governance Review section 2.1 and 2.2), and has developed a portfolio of activities both regionally and nationally which address the wider determinants of crime, the demands on contemporary policing, and the wider societal role of a high-profile, democratically elected individual within the region.

3.2 The changes proposed within the Governance Review and Scheme take this established role and profile as a starting point. They seek to protect and build on the successes of the model to date, and show how the governance of policing will evolve in line with the devolution process and wider changes in the governance and delivery of services to the public across the region and nationally. They demonstrate how we can ensure continuity through transition; and maintain the consistent, visible and robust accountability currently demonstrated through the statutory function of the Police and Crime Panel, and through maintaining the role and function of a Strategic Policing and Crime Board at the point of transfer.

3.3 The Governance Review and Scheme provide clarity on the role of a West Midlands Mayor acting as PCC, and the arrangements, accountabilities and delegations that enable the role to be discharged effectively in practice. They clarify the appropriate separation between a Mayor's role as PCC and as Chair of the Combined Authority – drawing on Home Office, OPCC and stakeholder advice to ensure that the model does not blur lines of accountability, and can continue to provide visible, consistent and clear policing governance.

3.4 The Governance Review and Scheme also suggest areas in which a West Midlands Mayoral PCC model can realise additional benefits across the policing and crime portfolio of a PCC, and for public service outcomes within the West Midlands more broadly. This would be supported in practice by the production of a Police and Crime Plan and a WMCA Business Plan that are necessarily distinct (as per provisions on police and crime plans set out in the 2011 Police Reform and Social Responsibility Act), but strategically aligned and mutually reinforcing.

4. Proposal

4.1 In line with the Cities and Local Government Devolution Act 2016 (Schedule 2), it is proposed that the Mayor will exercise in the Combined Authority Area all PCC functions. This is consistent with the current PCC model for policing governance: namely: a single, accountable individual responsible for the discharge of PCC functions who is directly elected by the public. In effect, the role, function and responsibilities do not change – from 2020 they are discharged by the Mayor who becomes PCC. This is underpinned by a number of key underlying principles which are backed up by legislative and policy detail within the Governance Review and Scheme:

4.2 *Maintaining the role, functions and profile of the PCC.* The underlying principle here is of ‘continuity’, in that all PCC powers will transfer to the Mayor – who will be elected as a Mayor with PCC powers in 2020, with all of the responsibilities, accountabilities and restrictions that go with these powers. An important difference between the underlying legal basis for the current model and the Mayoral PCC model is that the status of PCC as ‘Corporation Sole’ will change. The meaning and implications of this are explained, and the future proposal further clarified in Section 2.3, section 2.5 and within section 5 of the Governance Review. The Review outlines explicitly ways in which the important protections and assurances currently afforded by this legal status will be maintained within the Mayoral model in future. These have been worked up in collaboration with the Home Office.

4.3 *Providing assurance as to the ongoing importance and visibility of the PCC role.* As outlined above, the PCC has responsibility for both ensuring effective governance of policing in the region, and for a wider portfolio (usually described as the ‘and crime’ elements of the role). It is important to us that this governance role continues to be visible and robust, and that this wider portfolio is built upon and further developed. The Review outlines ways in which this will be done, such as the ongoing role of the statutory Police and Crime Panel, proposals to maintain on point of transfer a function which is in line with the current PCC’s Strategic Policing and Crime Board, and clarification of the role, scope and importance of a Deputy Mayor for Policing and Crime.

4.4 *Guaranteeing arrangements to ensure operational independence for the Chief Constable.* The operational independence of the Force is a key underlying principle of the PCC model. The Chief Constable is a ‘Corporation Sole’ and this will remain the case. The clear proposal outlined here is for this operational independence to be maintained: both within the underlying legislation proposed in the Scheme, and through the commitments made to continue current good practice around delegations, contracts, finances and to maintain the current scheme of consent at point of transfer. These are outlined within the Governance Review in Section 5.

4.5 *Ensuring that good governance and robust accountability are maintained.* It is vitally important that the integrity and professionalism of police governance will continue under a Mayoral PCC model. The Governance Review therefore shows how this will be maintained through a number of the assurances noted above (explained within Section 5); through a commitment to continue arrangements such as the Strategic Policing and Crime Board at point of transfer; and through a commitment to the transfer of OPCC officers through TUPE arrangements that will ensure continuity of support functions.

4.6 *Ensuring the whole scope of the PCC role is sustained and built upon.* The current role and profile of the PCC covers a range of activities (the 'and crime' functions) which we would seek to continue and build upon. A number of these are outlined in the Governance Review section 2, and the ways in which a Mayoral PCC model could build on these to generate wider synergies and public service reform benefits are outlined in section 4. We propose that – in line with the commitment to continuity for OPCC staff, contracts and undertakings – this portfolio of activities are sustained at point of transfer, after which they will be subject to the discretion of a Mayoral PCC much as they would any elected PCC.

4.7 *Providing guarantees that key PCC functions related to finance, assets, borrowing and contracts will remain ring-fenced and distinct from wider WMCA activities.* The Governance Review outlines specific ways in which functions currently guaranteed under the 'PCC as Corporate Sole' model would be guaranteed under a Mayoral PCC model, including:

- *Properties, Rights and Liabilities* – All decisions relating to PCC functions – and relating to assets, rights and liabilities – will be for the Mayor as directly elected individual, and exercised solely by the Mayor unless delegated appropriately. It is important to note that all police assets and funding will remain ring-fenced and for use within the policing service. These points are explained in the Governance Review section 5.6.
- *Appointments & HR* – All current staff within the OPCC will transfer to the WMCA under TUPE arrangements. The Mayoral Office of Policing and Crime (Mayoral OPCC) will be an independent function managed by a 'Mayoral OPCC Executive Director' (a post mirroring the current Chief Executive of the Office of the PCC). The Mayor would be involved with the appointment. This is explained in Section 5.7 of the Governance Review.
- *Borrowing* – The WMCA will have the same borrowing rights for Mayoral PCC functions that are currently enjoyed by the PCC. The Mayor will be responsible for decisions relating to borrowing (as laid out in the Revised Financial Management Code of Practice for Policing). The cost of such borrowing will be met from Police Funds, and kept separate to the discharge of other Combined Authority Functions in line with the ring-fencing of Police Funds outlined in Section 5.11 of the Governance Review.
- *Contracts* – decisions on entering into contracts regarding police matters are the responsibility of a PCC, with scope for some delegation to the Chief Constable. This arrangement will remain in place by law – giving the Mayoral PCC responsibility for all contracts, discharged in practice through a 'scheme of consent' that we would maintain along current lines at point of transfer. This is explained in further detail in the Governance Review section 5.12.

- *Police Funds and Police Precept* – the Governance Review outlines how the ring fencing of police funds will work in Section 5.10, including maintaining a distinct finance director role within the Mayor’s Office of Policing and Crime, and replicating current joint-audit arrangements in place between WMP and WMOPCC. The policing precept will be separate from any Mayoral precept, and will be set by the Mayor following consultation with the Police and Crime Panel. This is clarified in Section 5.10 of the Governance Review.

4.8 *Clarifying the role and scope of the Mayoral PCC, Deputy PCC and appropriate delegations.* There are clear statutory provisions governing the ability of a PCC to delegate certain functions to a Deputy PCC or anyone else. Certain functions may not be delegated, which are:

- Issuing a police and crime plan
- Setting the police budget including the council tax requirement; and
- Chief Constable appointments, suspensions and dismissals.

This will not change under proposed arrangements, as explained in Section 5 of the Governance Review. Functions that may be delegated to a Deputy Mayor for Policing and Crime (DMPC) are also outlined in Section 5.4 of the Governance Review, and will be subject to existing statutory prescriptions.

4.9 The Mayor will appoint a DMPC who will provide a strong role in supporting the Mayor in discharging PCC functions. This DMPC needs to be visible and credible (both within the region and nationally), commensurate with the needs of a large police force and in line with the current visibility and presence of the PCC currently. Proposed legislation will exclude Board Members of the Combined Authority from the DMPC role, and will restrict the role to those residing within the Combined Authority area. This is explained further in section 5.3 of the Governance Review.

4.10 *Ensuring a robust consultation process which gives stakeholders and the public the opportunity to input.* The Board has committed to going beyond the strict legal requirements to propose a robust consultation with stakeholders and the public to ensure the best possible arrangements for the West Midlands. Progress on consultation plans and the implications within the agreed timeline are outlined in Section 5 of this report below.

4.11 *Ensuring that transition arrangements are as seamless as possible* – As outlined in various sections above, we propose minimum disruption through the process of electing a Mayoral PCC through the TUPE transfer of current OPCC staff to the WMCA; commitments to ensure continuity of all OPCC protocols and arrangements at point of transfer; underpinned the legal guarantees around finance, contracts, delegations and borrowing outlined above. Section 5 of the Governance Review outlines this in more detail.

5. Next Steps

5.1 Recommendation 2 above asks the WMCA Board to note the Governance Review and Scheme, and to consent to taking these documents back to constituent councils for consideration. *In order to meet the timeline outlined in Section 5.4 below, any written feedback arising from this consideration will need to be submitted to WMCA officers by Friday 19th October.* This will give us time to incorporate feedback to the Governance Review and Scheme in time for November 2018 WMCA Board. At this Board meeting we will be seeking approval to take these documents out to public consultation.

5.2 A decision on the exact design of the consultation itself is not the subject of this report.

5.3 On 20th July 2018, WMCA Board indicated a desire for officers to further consider the most appropriate consultation process. We continue to work on an appropriate design that would meet the requirements of the board. We have taken independent legal advice, sought advice from the Consultation Society, and are in ongoing discussions with the Home Office to ensure that the proposition we will bring back to the Board is fair, lawful and robust. We will continue to work on these options between September and November, and will bring a firm proposal to November Board.

5.4 The indicative timetable is below – showing that the 8th March 2019 is the point at which Board approval to submit the scheme will need to be given. We will continue to work up options for consultation which may impact on the timeline to that point, and which will be brought back to the Board in November.

Action	Who	Date
Programme Board		06 July 2018
Approval to prepare Governance Review and Scheme	CA Board	20 July 2018
Governance Review and Scheme completed	CA/ PCC	Completed by end of August 2018
CA Board consider the Governance Review and Scheme	CA Board	14 th September 2018
Constituent Authorities and PCC consider Governance Review and Scheme and feedback comments to CA Board	Constituent Authorities/PCC	Sept/Oct
Seek Approval to Consult	CA Board	9 Nov 2018
Public Consultation	CA, Constituents and PCC	19 Nov- 14 Jan 2019
Consideration of Consultation Outcomes and final approval by Constituent Authorities/PCC	Constituent Authorities/PCC	Jan/ Feb 2019
Approval to submit	CA Board/PCC	8 th March
Scheme to Home Secretary	CA	Mid-March 2019
Home Secretary Approval	Home Office	April 2019
Preparation of Order	Home Office	April - July 2019
Agreement to Order	CA and Constituent Authorities	August 2019
Lay in Parliament*	Home Office	Oct/Nov 2019
Confirmation of Order	Home Office	December 2019
Election of Mayor with PCC Powers		May 2020

** The Electoral Commission report (September 2016) recommends that legislation impacting an election should be clear at least six months before the date of the scheduled poll. Tabling date will depend on Parliamentary approval processes but will need to be before 7 November at the latest.*

6. Financial implications

- 6.1 The financial implication of a public consultation would be determined by the nature and type of consultation.
- 6.2 The Financial implications of progression of governance arrangements and the statutory order will need to be identified and found through internal resources, with agreed support from the Home Office.
- 6.3 Wider costs of transition will need to be developed as part of any subsequent transition plan and funding identified.

7. Legal implications

- 7.1 The legal implications in terms of legislation are outlined in previous reports. Further legal implications are reported through the Governance Review and Scheme for consideration.

8. Equalities implications

- 8.1 There are no direct equalities implications arising out this report.

9. Schedule of background papers

Governance Review and Scheme