

# Policing in the 21<sup>st</sup> Century: Reconnecting police and the people

## Standards for England's response

### Introduction

1. Standards for England is the strategic regulator currently charged with maintaining and overseeing the conduct framework for local politicians, including members of police authorities. We therefore welcome the opportunity to comment on the Home Office's current consultation on reforming the police to help strengthen democratic accountability to the local population that each police force serves. Given our expertise, we are responding specifically to chapter 2 of the consultation paper, and in particular the first question in that chapter: *'Will the proposed checks and balances set out in this Chapter provide effective but un-bureaucratic safeguards for the work of Commissioners, and are there further safeguards that should be considered?'*
2. When the local government conduct framework was first established through enactment of the Local Government Act 2000, it was in direct response to a Committee on Standards in Public Life report<sup>1</sup> which concluded, amongst other things, that high ethical standards were critical in order to ensure public confidence in local government. One of the main aims of the Committee's recommendations was to improve democratic accountability at the local level.
3. With all public roles it is important that the public have confidence in the honesty and integrity of the individual they have elected or that they are empowered to take action where they feel this is not the case and the Police Commissioner role will be no different. Standards for England is therefore encouraged to see that the Home Office has included some detail in this consultation not only about how elected Police and Crime Commissioners will be expected to hold the local Chief Constable to account, but also about how there will be checks and balances in place to ensure that the Police Commissioner him or herself can be held to account.

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<sup>1</sup> Committee on Standards in Public Life (1997) Standards of Conduct in Local Government, Third Report of the Committee on Standards in Public Life

4. Standards for England notes that the shape of those accountability mechanisms is similar in design to the framework currently in place for members within local authorities and police authorities in England. Our research shows that the local government conduct framework has had a positive impact on the perception of standards of behaviour from those working within local government. The same research also shows that a large proportion of our stakeholders are quite or very confident that their council would uncover and deal with any breaches of standards of behaviour.<sup>2</sup>
5. However, whilst we welcome the similarity of your plans to the current local government standards framework we must also offer some words of caution. The Government has committed itself to abolish the current local government standards framework in England (though not in Wales which is also covered by your proposals). While details of any replacement framework have not yet been set out, the Government is intending to bring forward proposals in the forthcoming Decentralisation and Localism Bill. Given the clear similarities there will be in the public eye between a directly elected Commissioner and other locally elected figures, the Home Office may need to consider whether having different local accountability frameworks may lead to public confusion and thereby go against the stated aims of achieving transparency. We will highlight those difficulties in this response, in particular where disparities may exist for those who have been elected at both the local authority and police levels.

## **Background**

6. The importance of high standards in public life is of particular concern since there is an expectation from the public that those in public life adhere to a high set of standards of behaviour<sup>3</sup>. The public desire a more honest and reflective approach to politics, and hold the view that political leaders have a special responsibility when it comes to good conduct<sup>4</sup>. Research also shows that having confidence in the integrity of politicians is valued by the public.<sup>5</sup>
7. Given the intended role of Police Commissioners, including their responsibility to represent and engage with those that live and work in the local community, it would seem reasonable to assume that the public would have a similar expectation about the Commissioner's behaviour as with other public roles. Citizens should expect and experience high standards of behaviour and probity whenever decisions are taken or resources allocated that affect lives and communities.

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<sup>2</sup> BMG Research (2009) Stakeholder Tracker 2009 (Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment)

<sup>3</sup> BMG Research (2009) How Proportionate is the Standards Framework?

<sup>4</sup> Committee on Standards in Public Life (2004) Survey of Public Attitudes towards Conduct in Public Life

<sup>5</sup> Allen N and Birch S (2009) Working paper on Political Conduct and Misconduct: Probing Public Opinion, Essex University

8. It follows that any drive to improve democratic accountability in the policing system should pay due regard to the importance of strong ethical behaviour and the associated framework needed to ensure that those locally elected, public figures work in a transparent and accountable manner. Having the right system of checks and balances in place for Police Commissioners seems to be especially important in order to ensure that the public have faith that the person they have elected to hold their local police force to account will not be able to abuse his or her position once elected and can, in turn, be held to account should the need arise.
9. The local government standards framework as it currently stands applies to all elected councillors in England. Each local authority is responsible for adopting its own Code of Conduct, based on the Model Code which is set out in statute.
10. Having local Codes which are based on a nationally-set Model Code allows for an important element of flexibility of approach in the conduct framework, recognising that different local situations give rise to different expectations and priorities, whilst also providing for a degree of consistency. This reflects the view of the Committee on Standards in Public Life that there are some aspects of behaviour which are applicable to all local authorities and which all members of the general public should expect from their local representatives.<sup>6</sup>
11. All principal authorities have a Standards Committee which includes both political and independent members and must be chaired by an independent member. Police authorities also have a Standards Committee. The Standards Committee, aided by the authority's monitoring officer, is responsible for dealing with complaints and imposing sanctions should it be appropriate to do so. Where there are specific reasons why a case cannot be dealt with locally, the Standards Committee can refer it to Standards for England for investigation. Likewise, where it is felt that a stronger sanction is needed than can be applied locally, cases can be passed to the First Tier Tribunal for the final hearing and imposition of a sanction.
12. Between 8 May 2008<sup>7</sup> and 31 March 2010, a total of 3436 complaints were made about councillor behaviour by members of the public. This amounts to 56% of all complaints.
13. Apart from dealing with referred cases, Standards for England acts as an independent strategic regulator, providing advice and guidance to those

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<sup>6</sup> Committee on Standards in Public Life (1997) Standards of Conduct in Local Government, Third Report of the Committee on Standards in Public Life

<sup>7</sup> The standards framework changed on 8 May 2008, with local Standards Committees becoming responsible for dealing with the majority of complaints.

involved in the framework locally and, until recently, monitoring the functioning of the framework to ensure the necessary level of independence, fairness, consistency and adherence to statutory requirements.

14. Although there is not a large amount of detail in the consultation document about how the system of checks and balances for Police Commissioners will work, the detail that is there suggests that various of the components set out above will be replicated, namely:

- The Police and Crime Panels will perform a similar role to Standards Committees, with both local councillors and lay people sitting on them and with a role in dealing with any complaints submitted
- Elected Police Commissioners and the staff they appoint will be subject to a Code of Conduct, although it is not clear whether there would be a single code or whether local variants will develop
- More serious complaints will be referred up to the IPCC for possible investigation, as with Standards for England in local government, although the IPCC will also be responsible for imposing any sanctions. Standards for England has itself never had any sanctioning power as there have been concerns about the human rights implications of the same body investigating and adjudicating so Standards for England has referred its findings to a separate independent tribunal or back to the local level
- In addition, HMIC adds a further independent element, performing a light-touch inspection role to help local people gain access to all the necessary information needed in considering whether or not a Commissioner is fulfilling his or her role adequately. This is, in some ways, similar to Standards for England's monitoring role which allows for additional transparency about how local authorities are dealing with cases.

## **Chapter 2: Increasing Democratic Accountability**

15. As stated in previous paragraphs, Standards for England is supportive of the Home Office's desire to create an adequate system of checks and balances to allow the public to hold Police Commissioners, and their staff, to account. Our main concern is the potential confusion that could be created for members of the public as to why they are able to complain about one locally elected representative but not another if the Government removes the conduct framework for local councillors but implements one for Police Commissioners. This confusion is likely to be exacerbated where the roles of local councillor and Police Commissioner are combined in one individual as there appears to be no bar stated in the consultation to an individual holding both positions.

16. In paragraph 2.12 you note that *'The Government wants candidates for Commissioners to come from a wide range of backgrounds, including both representatives of political parties and independents.'* As these will be individuals from the local area, there is a strong possibility that the person elected as Commissioner may already be a local councillor. Indeed, the Government has suggested that they would welcome local Mayors undertaking the role of Police Commissioner. As distinct plans exist to hold referenda on having Mayors in 12 major cities, and as there have been reports of the possibility of some areas having 'Super-Mayors', responsible for combining the leader and executive roles, the decision-making power invested in one individual could be substantial and wide-ranging.
17. Such a situation makes the need for a robust accountability framework even more important. But this is also where difficulties arise as, subject to any proposals made for the local government standards framework, the Police Commissioner may be the only locally elected representative that has to adhere to a conduct framework and could be subject to complaints and independent investigation about their conduct. This gives rise to the possibility that, where one person holds both the Police Commissioner role and a local authority role, (acting as Mayor for a local council in the police force area for example), their behaviour when undertaking the former role will be subject to a Code and complaints mechanism - including investigation by the IPCC, sanctioning and the right of recall - but their behaviour when acting as a Mayor may not. Not only would this be confusing for the individual concerned, and may make any actions less transparent as they could claim they were acting in a different capacity, but it would also create confusion for the general public. It may be difficult for them to understand the distinction in roles and what level of involvement in terms of holding that individual to account they can expect and when.
18. Standards for England believes that, whatever approach is taken, equivalence of approach to locally elected representatives in the eyes of the public is very important, including a standardisation of the criteria for expected conduct and mechanisms for dealing with misconduct.
19. An additional concern arises from the possibility, which we understand Communities and Local Government Ministers are considering, of the current local government framework being partly replaced by new criminal offences for councillors which the police would have responsibility for investigating. For example, if the registration and declaration of prejudicial interests were to return to being a criminal matter, (in the absence of a conduct framework for dealing with such situations), as it was before the Local Government Act 2000, the Commissioner, although not responsible for operational matters, could in theory set a strategy which says minimal resources should be given to investigating elected politicians, of which the Commissioner might be one. This would risk a direct politicisation of a conduct regime and could in any case lead to public suspicions of political interference even where the police quite rightly decided not to respond to specific allegations about an elected councillor. Although this situation may

be unlikely, the scenario presented by the changes proposed within the police and local government fields does give rise to the possibility of it happening, particularly as the Police and Crime Panels will also have local councillors sitting on them.

20. Even where the Police Commissioner role is not filled by a local politician, it is the Home Office's intention that local councillors should sit on the Police and Crime Panels that test the decision-making of the Commissioner and refer cases of misconduct to the IPCC for investigation. This would again give rise to an inconsistent system whereby one locally elected representative who is subject to a conduct regime is being overseen by other locally elected representatives who may not be. It seems to be at odds for councillors to have this role in holding Police Commissioners to account if their own actions, including their actions when sitting on the Police and Crime Panel, may no longer be subject to the same conduct criteria, in particular given the likelihood that the public would have difficulty in differentiating between the different accountabilities.

## **Conclusion**

21. In conclusion, Standards for England welcomes the Home Office's commitment to providing a robust system of checks and balances to ensure that local people are able to hold their elected Police Commissioner to account. We believe it is important to have in place a mechanism for dealing with issues of misconduct to enhance public trust and accountability.
22. However, given the plans to abolish the local government conduct framework in the upcoming Localism Bill, and in the interests of consistency of approach which would be to the benefit of both the local politicians involved and the general public, the Government should consider these two sets of proposals together to ensure that there is a consistent approach which would be clear to the public about how locally elected representatives may be held to account for misconduct.
23. Finally, Standards for England would be happy to provide any further detail or information that the Home Office considers may be of use as it establishes its plans for Police Commissioners and their associated bodies in more depth or to answer any further questions that this consultation response may have given rise to.