

**Meeting date:** 8 November 2018

**Report to:** Full Cabinet



**Subject/report title:** Governance Review and Scheme for the transfer of the Police and Crime Commissioner Functions to the Mayoral West Midlands Combined Authority

**Report from:** Cllr Sleigh Leader of the Council

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**Wards affected:**

- All Wards |  Bickenhill |  Blythe |  Castle Bromwich |  Chelmsley Wood |  
 Dorridge/Hockley Heath |  Elmdon |  Kingshurst/Fordbridge |  Knowle |  
 Lyndon |  Meriden |  Olton |  Shirley East |  Shirley South |  
 Shirley West |  Silhill |  Smith's Wood |  St Alphege

**Public/private report:** Public

**Exempt by virtue of paragraph:**

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**1. Purpose of Report**

- 1.1 To receive recommendations from the Resources and Delivering Value Scrutiny Board on the proposed Mayoral WMCA PCC governance model. The WMCA Board has asked Constituent Authorities consider the proposals and provide feedback prior to the commencement of a public consultation exercise.

**2. Decision(s) recommended**

- 2.1 Cabinet is asked to note the proposals for a Mayoral WMCA PCC Governance model and to consider the recommendations received from Resources and Delivering Value Scrutiny Board.

**3. What is the issue?**

- 3.1 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".

- 3.2 Following agreement of the Devolution Deal, the West Midlands Combined Authority and the West Midlands Police and Crime Commissioner have continued 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.
- 3.3 At the WMCA Board meeting of 20<sup>th</sup> 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".
- 3.4 The Combined Authority have now developed a governance review and scheme identifying the rationale for the transfer of the PCC function into the CA on which they are seeking Constituent Authorities views prior to commencing a period of public consultation. Attached at Appendix 1 is the Governance Review and Appendix 2 is the Scheme.
- 3.5 The Council is not being asked at this stage to provide any formal consent to the transfer of PCC functions into the CA. This is an opportunity for the Council to comment on the proposals and timescales.

### **Rationale**

- 3.6 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 within 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.
- 3.7 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.
- 3.8 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.

- 3.9 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.

## Proposal

- 3.10 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:
- 3.11 *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.
- 3.12 *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.
- 3.13 *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.

- 3.14 *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.
- 3.15 *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
- 3.16 *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.

3.17 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.

3.18 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.

3.19 *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.

3.20 *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.

### Next Steps

- 3.21 The indicative timetable below identifies the 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.
- 3.22 A decision on the exact design of the consultation itself is not the subject of this report.
- 3.23 On 20<sup>th</sup> 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.
- 3.24 The indicative timetable is below – showing that the 8<sup>th</sup> 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
Governance Review and Scheme completed	CA/PCC	August 2018
CA Board consider the Governance Review and Scheme	CA Board	September 2018
Constituent Authorities and PCC consider Governance Review and Scheme and feedback comments to CA Board	Constituent Authorities/PCC	Sept/October
Seek Approval to Consult	CA Board	9 <sup>th</sup> November 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	8th March
Scheme to Home Secretary	C A	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

#### **4. What options have been considered and what is the evidence telling us about them?**

- 4.1 The Governance Review and Scheme provide the detail of the options to be considered. There is a do nothing option but this will not achieve the benefits identified in the Scheme.

#### **5. Reasons for recommending preferred option**

- 5.1 The principle of the transfer of powers into the mayoral WMCA was contained in the second devolution deal. The rationale and benefits of the transfer are contained in the report and the Governance Review. These proposals are subject to public consultation before any decision on implementation is made.

#### **6. Implications and Considerations**

- 6.1 Delivery of key themes in the Council Plan:

How will the options/proposals in this report contribute to the delivery of the key themes in the Council Plan?

- Improve Health and Wellbeing
- Managed Growth
- Build Stronger Communities
- Deliver Value

- 6.2 Implications for children and young people, vulnerable groups and particular communities:

- 6.2.1 None as a direct result of this report.

### 6.3 Consultation and Scrutiny:

6.3.1 RDVSB are being asked to consider the proposals. Subject to the agreement of all the Constituent Authorities and the Combined Authority, the proposals will be subject to a public consultation as outlined in the report..

### 6.4 Financial implications:

6.4.1 The costs of the consultation and any subsequent transfer will be met by the WMCA.

### 6.5 Legal implications:

6.5.1 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.

### 6.6 Risk implications:

6.6.1 None as a direct result of this report.

### 6.7 Statutory Equality Duty:

6.7.1 A robust public consultation process is intended to capture and take account of the views of residents across all equality groups on the revised functions of the WMCA as set out in this report.

## **7. List of appendices referred to**

7.1 Appendix 1: Governance Review

7.2 Appendix 2: Scheme

## **8. Background papers used to compile this report**

8.1 N/A

## **9. List of other relevant documents**

9.1 N/A