

The Policing Protocol Order 2011 consultation

Summary of responses

Published on: 12 June 2023

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Introduction and contact details

This document is the post-consultation report for the consultation paper, 'The Policing Protocol Order 2011 consultation'.

It will cover:

- the background to the consultation
- a summary of the consultation responses
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies or alternative versions of this report and the consultation paper can be obtained by writing to the address or email below:

Police Strategy and Reform Unit Home Office 2 Marsham Street London SW1P 4DF

ProtocolConsultation@homeoffice.gov.uk

This report is also available at gov.uk/government/consultations/changes-to-the-policing-protocol

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Home Office at the above address.

Background

The Government's 2019 manifesto committed to strengthening the accountability of Police and Crime Commissioners (PCCs) and expanding their role. PCCs were introduced in 2012 to give the public a direct say in policing in their area. It is important that PCCs are strong, visible leaders in the fight against crime and have the legitimacy and tools to effectively hold their police force to account.

In July 2020, we announced a two-part review into the role of PCCs. During Part One of the Review, we collated views and evidence from stakeholders across policing, fire and local government as well as voluntary and community organisations. Through this engagement, we heard the importance of ensuring that both PCCs and Chief Constables have a clear, shared definition of their respective roles and responsibilities so they can work effectively and constructively together to help cut crime.

The Policing Protocol Order 2011 (the Protocol) was issued in accordance with the requirements of section 79 of the Police Reform and Social Responsibility Act 2011. The Protocol is a document that was issued to support effective, constructive working relationships in the policing sector following the establishment of PCCs. The Protocol came into force in January 2012 and has not been amended since its creation.

The Protocol sets out how the Home Secretary, PCCs (including Mayors who exercise PCC functions and the London Mayor's Office for Policing and Crime (MOPAC)), Chief Constables and Police and Crime Panels ('Panels') should, in the Home Secretary's view, exercise functions in relation to each other. This includes how to exercise or refrain from exercising functions to encourage, maintain or improve working relationships or limit or prevent the overlapping or conflicting exercise of functions.

To amend the Protocol, the Home Secretary is required by statute to consult with bodies that represent the relevant parties to the Protocol and any other persons the Home Secretary sees fit.

The consultation paper 'The Policing Protocol Order 2011' was issued on 7 March 2022 as an eight-week targeted stakeholder consultation. It invited comments on potential changes to the Protocol to provide a 'brighter-line' on the boundaries of operational independence and reflect changes in the relationship between the parties to the Protocol which have taken place over time.

The consultation period closed on 2 May 2022 and this report summarises the responses.

A list of respondents is at Annex A.

Summary of responses

- As representative bodies of the parties to the Protocol, views were sought from the Association of Police and Crime Commissioners (APCC) on behalf of PCCs, the National Police Chiefs' Council (NPCC) and Chief Police Officers Staff Association (CPOSA) on behalf of Chief Officers, and the Local Government Association (LGA) and Welsh Local Government Association (Welsh LGA) on behalf of Panels. Views were also sought from MOPAC, as a party to the Protocol.
- 2. Additional views were sought from other key stakeholders, including His Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), the College of Policing, the Independent Office for Police Conduct (IOPC), the Association of Policing and Crime Chief Executives (APACE), the Police Federation, the Police Superintendents' Association, the National Crime Agency (NCA) and the nine Mayoral Combined Authorities¹.
- 3. A total of 56 responses to the consultation paper were received. These consisted largely of the organisations listed above as well as individual submissions from 31 PCCs, five Panels and the National Association of Police, Fire and Crime Panels, and five Police Forces.
- 4. Each question contained a closed question with respondents invited to indicate one of five responses: Strongly agree; Agree; Neither agree, nor disagree; Disagree; or, Strongly disagree. Each question was followed by an open text box where respondents were invited to add any additional comments. Questions 9 and 10 did not contain a closed question. The open responses were analysed for common themes and levels of support for proposed measures.
- 5. Respondents were not required to answer all of the questions in the consultation. Accordingly, not all 56 respondents answered every question and there were no questions that were answered by all 56 respondents. This is reflected in the analysis below.
- 6. In this analysis, responses for 'Strongly agree' and 'Agree' have been grouped to be described as those who agreed with the proposals. Similarly, responses for 'Strongly disagree' and 'Disagree' have been grouped as those who disagreed with the proposals.

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¹ At the time of consulting, there were nine Mayoral Combined Authorities: Cambridgeshire and Peterborough, Greater Manchester, Liverpool City Region, North of Tyne, South Yorkshire, Tees Valley, West Midlands, West of England and West Yorkshire.

Responses to specific questions

1. Do you agree/disagree that the Protocol should be updated so that it is clear on its face that it refers to PCCs and Mayors with PCC functions, except where specified that there is a difference?

Out of 51 respondents, the majority of respondents (48 respondents, 94%²) agreed that the Protocol should be updated so that it is clear that it refers to PCCs and Mayors who exercise PCC functions, except where specified that there is a difference. Respondents generally agreed that this would provide greater clarity and prevent any ambiguity in its remit and scope.

2. Given that Mayors with PCC functions have a wider set of responsibilities, should we specifically clarify that the remit of the Police and Crime Panel extends only to their PCC functions, and not their wider mayoral functions or powers?

Out of 37 respondents, all agreed that the Protocol should specifically clarify that the remit of the Panel extends only to a Mayor's exercise of their PCC functions, and not their wider mayoral functions or powers. Some respondents felt that this would help clarify the remit of the Protocol and how these parties interact, with some respondents noting that it would additionally be useful to include Police, Fire and Crime Commissioners explicitly in the Protocol.

3. Do you agree/disagree with the proposed revised wording on the Home Secretary's role in policing (paragraph 6.3 of the consultation document)?

This question sought views on proposed revised wording which intended to better reflect how the Home Secretary's role in, and interaction with, policing has changed since 2012.

Out of 52 respondents to the closed question, the majority (44 respondents, 85%) disagreed with the proposed revised wording on the Home Secretary's role in policing. There were two primary reasons for this: the inclusion of references to the National Policing Board³ (NPB) and the reference to the Home Secretary having "a legitimate role in holding PCCs and Chief Constables to

² Please note that all percentages used in this summary of responses have been rounded to the nearest integer.

³ National Policing Board - https://www.gov.uk/government/groups/national-policing-board

account".

The majority of those respondents who commented on this question raised concern at including references to the NPB within the Protocol. This was largely due to a perception that this could give the Board a quasi-statutory footing and therefore a role beyond its remit.

Those who raised concerns with references to the Home Secretary's role in holding PCCs and Chief Constables to account, noted the importance of localism in policing arrangements, reflecting that PCCs are held to account by the electorate and that the proposed changes might affect these effective local arrangements.

In consideration of this feedback and following further sector engagement to better understand these concerns, the Government intends to clarify the Home Secretary's responsibility to Parliament and the relationship that is required with PCCs and Chief Constables to ensure the policing system works effectively in the Protocol wording. The Government believes in local policing that is accountable to local communities, and the Government's proposals respect the operational independence of policing and the local mandate of PCCs. Due to the sector's concerns about directly referencing the NPB within the Protocol, the Government does not intend to include these references in the amended Protocol, instead consolidating these into broader references to "national policing governance and oversight boards" in a new Paragraph 29 (as outlined in the response to question 6).

4. Do you agree/disagree with the proposed revised wording on the application of the Home Secretary's powers and tools (paragraph 6.7 of the consultation document)?

This question sought views on how to clarify the Protocol to equip the Home Secretary to intervene earlier in appropriate circumstances in order to reduce the risk of failing to deliver effective policing.

Out of 52 respondents to the closed question, the majority (44 respondents, 85%) disagreed with the proposed revised wording on the application of the Home Secretary's powers and tools. A number of respondents noted that the existing wording is consistent with the devolution and local accountability model of policing and believed the current wording "used only as a last resort" should remain. Other respondents felt that the "last resort" wording could be removed on the basis that further clarification around when these powers might be used was provided.

In consideration of this feedback, the Government will highlight the existing criteria which governs the Home Secretary's reserved powers and legislative tools to enable intervention and direction to all parties. Whilst removing the "last resort" language, the Government intends to draw attention to some of the safeguards which already exist on these powers and the criteria under which they can be exercised. The Government will also seek to emphasise that such powers would only be exercised in exceptional circumstances.

5. Based on the changes proposed at paragraph 6.7 of the consultation document, can you provide any specific examples, either from previous situations/scenarios or likely future ones, where you would have/would envisage seeking Home Secretary intervention?

This question sought views on how and when Home Secretary intervention would be sought by Parties to the Protocol, including past instances and any potential future instances.

Out of the 54 respondents, some (28 respondents) chose not to share any specific examples of when they have or would envisage seeking Home Secretary intervention, stating that should such circumstances arise, the policing body involved would notify the Home Secretary accordingly. These responses primarily came from PCCs.

The remaining 26 respondents provided a range of potential scenarios where Home Secretary intervention might be sought. These included responding to a significant national threat, where military support is needed or to request additional resources to cover the expense of a large-scale policing operation in unforeseen circumstances. Other scenarios included offering support as required in collaboration or de-collaboration agreements, in the best interests of public safety or national security where appropriate policing measures not being taken in the event that the national threat level is moved to 'critical', or a unilateral decision to withdraw from a Regional Organised Crime Unit.

In relation to Panels, responses indicated that Home Secretary intervention might be sought where a PCC is constraining operational independence in a way which is not being, or cannot be, addressed through Panel scrutiny or where information has been withheld from the Panel.

Other respondents noted that Home Secretary intervention could be useful in resolving any conflict which might arise between local crime plans and national policy. Equally, it was felt the Home Secretary should be able to intervene where a PCC has lost public confidence or their actions or behaviour may lead to a potential loss of public confidence in the role.

Responses to this question have helped to inform the Government's approach to question 4 and have been reflected in the respective proposed amended wording.

6. Do you agree/disagree with the proposed revised wording (paragraph 6.11 of the consultation document) in relation to the Home Secretary's role in governance arrangements?

This question sought views on proposed revised wording to reflect the Home Secretary's role in setting the Government's strategic direction on national policing policy.

The majority of respondents to the closed question (44 of 51 respondents, 86%) disagreed with the proposed revised wording. Of the 54 respondents who provided an additional comment, 37 respondents expressed concerns at the proposed references to the NPB (as per question 3).

A number of respondents, including many PCCs, noted that the Home Secretary sets the Strategic Policing Requirement (SPR)4 and PCCs and Chief Constables must have regard to this in developing local policy. Several of these respondents suggested an amended form of wording focusing on the duty to have regard to the SPR and guidance issued by the Home Secretary.

In consideration of this feedback, the Government will not include a direct reference to the NPB, instead referring to the fact that the Home Secretary may ask PCCs and Chief Constables to report to "national policing governance and oversight boards". The new wording will retain the inclusion of the SPR and its role in the development of local policing policy. This should help to clarify the lines between local and national policing policy.

7. Do you agree/disagree with the proposed revised wording regarding the Home Secretary's power to request information about policing matters (paragraph 6.14 of the consultation document)?

This question sought views on proposed revised wording to make clear that the parties to the Protocol should expect the Home Secretary to ask questions of PCCs and Chief Constables about operational and strategic policing matters, drawing on existing powers.

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⁴ Section 37A of the Police Act 1996 provides that the Strategic Policing Requirement (SPR) is to set out what, in the Home Secretary's view, are the national threats at the time the SPR is issued, and appropriate national policing capabilities to counter those national threats

Out of the 51 respondents to the closed question, most respondents (39 respondents, 76%) disagreed with the proposed revised wording.

As in previous questions, 34 respondents expressed concern at the proposed revised wording including references to the NPB. 28 respondents felt that the clarification was not needed in relation to Chief Constables, as the power for the Home Secretary to request information from them exists in statute elsewhere⁵. 20 respondents, including many PCCs, noted that PCCs are not required by statute to give information to the Home Secretary.

In consideration of this feedback and further sector engagement to better understand these concerns, the Government proposes to amend the revised wording to reflect that the Home Secretary is able to request information from policing partners, within the existing legal framework, given the Home Secretary's responsibility to Parliament for policing.

8. Do you agree/disagree with the wording suggested in relation to the role of the Chief Constable (paragraph 6.19 in the consultation document)?

This question sought views on proposed wording to reinforce that it is the role of the Chief Constable to ensure that their force acts at all times with impartiality and without political bias or deliberate political stance.

Out of 52 respondents, the majority of respondents to the closed question (43 respondents, 83%) disagreed with the proposed revised wording. 32 respondents noted the ambiguity of the phrase, 'politically neutral', with some adding that its introduction could create additional tensions in the relationships between the parties to the Protocol. 42 respondents from across the sector felt that the addition was unnecessary or did not add value.

Several respondents cited other documents referring to impartiality including the Oath of Attestation and the Code of Ethics. Respondents who mentioned the Oath of Attestation also used this to affirm that the proposed additional wording to the Protocol was unnecessary, with some suggesting the inclusion of this wording in the Protocol.

Six respondents agreed with the proposed wording, pointing to the importance of policing remaining apolitical.

It remains the Government's intention to amend this wording to reinforce that it is the Chief Constable's role to ensure that their force acts with impartiality, which includes political impartiality. In considering the feedback to the

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⁵ Section 44. Police Act 1996

consultation, the Government will reference the Code of Ethics which recognises the limitations on police officer's involvement in politics as set out in Regulation 9 (Schedule 1, Part 1) of the Police Regulations 2003. The Government also proposes to amend the wording to refer to 'political impartiality' as opposed to 'political neutrality'. This more closely aligns with every Constable's attestation to serve "with fairness, integrity, diligence and impartiality"⁶ and will bring clarity and avoid further tensions between operational independence and oversight and accountability.

9. Are there specific changes to the Protocol that we could make to further clarify the distinct responsibilities that the PCC and CC [Chief Constable] have respectively with regard to policing?

53 respondents gave a response to this question. The majority of respondents noted that the current iteration of the Protocol works well, providing that the parties adhere to it, in providing clear and effective guidance for constructive working relationships. Many respondents also noted that the Protocol already effectively defines and preserves the operational independence of Chief Constables, although the importance of local discussions in facilitating a good relationship between PCCs and Chief Constables was also recognised.

A number of suggestions were made to clarify the distinct responsibilities of PCCs and Chief Constables, these included early agreement on the boundaries of operational independence and local schemes of corporate governance, as well as recommending a memorandum of understanding to set out the terms of an effective local working relationship. It was also suggested that clarification on the mechanisms in place to resolve disputes over operational independence would be useful.

Other proposed changes included clarification on Panels and their scrutiny function and the role of the PCC in providing information to central Government.

Following recommendations from the PCC Review, the Government is working with sector partners to update guidance, including reviewing best practice guidance for PCC and Chief Constable relationships, building on existing Accountability Guidance, including in relation to performance management, and developing a framework for the use of independent mediation by PCCs and Chief Constables in appropriate circumstances, as well as revised Panel guidance.7

⁶ Schedule 4, Police Act 1996.

⁷ Police, fire and crime panels guidance - https://www.gov.uk/government/publications/police-andcrime-panels/police-fire-and-crime-panels-guidance

The Government will use responses to this question to inform its approach to the revised Protocol, particularly in relation to financial responsibilities. The specific changes to the Protocol and the updated guidance documents should further clarify the distinct responsibilities of PCCs and Chief Constables.

10. In updating and refining the Protocol, are there any specific changes that we could make to the document which you consider would further clarify the relationship between the Home Secretary, the PCC and CC [Chief Constable]?

Respondents were generally positive about the Protocol and how it clarifies the roles of the parties to the Protocol. Questions 9 and 10 evoked similar themes and answers.

Respondents provided specific proposed changes to the Protocol, with some responses focusing on ensuring that there is balance across key players in the system, clarifying the roles and responsibilities of PCCs and Chief Constables, including a provision for the parties to the Protocol to build and maintain mutual constructive dialogue about local implementation of national guidance and including information within the Protocol on the complaints handling arrangements.

Responses to this question have helped to inform the Government's approach to the revised Policing Protocol. These changes will clarify the roles and responsibilities of PCCs and Chief Constables, as well as their relationship with the Home Secretary and will be consolidated further by the ongoing guidance refreshes mentioned above in the summary of question 9.

11.Do you agree/disagree with the proposed revised wording on operational matters and the role of the Panel (paragraph 6.26 of the consultation document)?

This question sought views on proposed wording to make it clearer that the Chief Constable is accountable only to the PCC and clarifying when it is appropriate for a Panel to request that a Chief Constable attend a panel scrutiny meeting. This followed concerns heard through the PCC Review that Panels sometimes overstepped their remit by routinely asking detailed operational questions.

Out of 51 respondents to the closed question, 14 respondents (27%) agreed with the proposed revised wording and 35 respondents (69%) disagreed with

the proposed revised wording on operational matters and the role of the Panel. Of the 51 respondents that provided additional comments, 27 respondents felt that the additional proposed language is unnecessary. 21 respondents noted that this was a matter which was better determined locally. 18 respondents felt that the new wording could limit Police (Fire) and Crime Panels' discretion to ask a Chief Constable to attend a Panel.

In consideration of this feedback and further sector engagement to better understand these concerns, the Government proposes to amend the wording to more closely reflect the wording of s.29(6) of the Police Reform and Social Responsibility Act 2011, which sets out when a Chief Constable might be asked to attend a Panel. This outlines that a Panel "may (at reasonable notice) request the relevant Chief Constable to attend before the Panel on the same occasion to answer any question which appears to the Panel to be necessary in order for it to carry out its functions".8

12. Do you agree/disagree with the proposed revised wording in relation to schemes of delegation (paragraph 6.29 of the consultation document)?

This question sought views on proposed revised wording intended to clarify the respective roles of the PCC and the Chief Constable regarding financial matters. Previous research undertaken through the PCC Review has suggested that the limits of financial delegation between the PCC and Chief Constable can have an impact on operational independence.

Respondents had differing views on the proposed revised wording in relation to schemes of delegation, with 16 respondents (31%) agreeing and 31 respondents (61%) disagreeing out of a total of 51 respondents to the closed question.

54 respondents provided an additional comment to this question. Of these respondents, 26 respondents raised concerns that the proposed revised wording could impact local arrangements, affecting the ability to adapt to local policing needs.

9 respondents suggested that it could be helpful to broaden the references to "schemes of delegation" to "schemes of local governance" to ensure all financial constraints are covered.

⁸ Section 29 (6), Police Reform and Social Responsibility Act 2011.

In consideration of this feedback and further sector engagement, the Government intends to broaden the reference to "schemes of delegation" to "local schemes of governance".

13. Do you agree/disagree with the proposed revised wording in relation to schemes of delegation and operational independence (paragraph 6.33 of the consultation document)?

This question sought views on proposed revised wording intended to reinforce the expectation that schemes of governance should enable Chief Constables to deliver their role efficiently and effectively. This is in accordance with the principle of operational independence.

The Government proposes to amend the wording from 'schemes of delegation' to 'schemes of governance' following feedback from the sector (as per Paragraph 17d).

Respondents had differing views on the proposed revised wording in relation to schemes of delegation and operational independence, with 13 respondents (25%) agreeing and 31 respondents (61%) disagreeing out of a total of 51 respondents to the closed question.

53 respondents provided an additional comment to this question. 22 respondents, mainly PCCs, raised concerns that the proposed wording might limit PCCs' role in budgeting and impact their ability to hold their Chief Constable to account. Others noted that a too tight a scheme of governance can hamper operational independence, given the links to deployment decisions in operational settings.

Nine respondents noted that referring to the wider term of "schemes of governance" might be more helpful than "schemes of delegation", as this would mean that there are fewer opportunities to potentially fetter the operational independence of the Chief Constable.

In consideration of this feedback and further sector engagement to better understand these concerns and to deliver consistency with the changes resulting from the results of question 12, the Government intends to broaden the reference to "schemes of delegation", to "local schemes of governance". The Government also intends to amend the Protocol to ensure that operational independence is protected by outlining that these local schemes of governance should assist the Chief Constable in delivering their role.

Conclusion and next steps

The Protocol sets out how policing governance relationships should work and seeks to codify the operational independence of Chief Constables, a fundamental principle of British policing.

However, it has not been amended since its introduction in 2011 and it has, at times, been a source of some doubt or confusion between parties to the Protocol. The Government has therefore taken this opportunity to reflect on how roles in policing have changed over time to ensure that all parties to the Protocol can work effectively and constructively together to help cut crime. This ambition is supported by evidence gathered through Part One of the PCC Review and responses to this consultation, where the Government heard evidence on the need for clarification of the working relationships between policing system partners and that the tripartite relationship between the Home Office, PCCs and CCs, could be more clearly articulated and, in some areas, recalibrated.

The intended changes seek to best reflect the roles and responsibilities of those across the current policing landscape, including that of the Home Secretary, given the Home Office role in setting the strategic direction for policing and gripping national issues. This reflects the legitimate role of the Home Secretary given their responsibilities to Parliament for policing, the backstop powers they hold to intervene in the system to ensure efficient and effective policing that protects public safety and the funding Government provides. It also reflects the role of PCCs in driving local policing priorities and acting as strong visible leaders and the responsibilities of Chief Constables for the direction and control of their force and leading the local operational response.

The proposed amendments will also sharpen existing lines of operational independence, providing appropriate clarity for PCCs and Chief Constables to operate effectively in relation to financial delegation. We will also take the opportunity to refresh references to bodies which are out-of-date, such as the Independent Office for Police Conduct (previously IPCC, now IOPC) and His Majesty's Inspectorate of Constabulary and Fire and Rescue Services (previously HMIC, now HMICFRS).

We welcome the views and suggestions that have been shared through this consultation, which have been used to inform revisions to the Protocol wording. Following this consultation, the Government will now seek to introduce a revised Policing Protocol as soon as Parliamentary time allows.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018.⁹

⁹ Consultation principles: guidance - GOV.UK (www.gov.uk) https://www.gov.uk/government/publications/consultation-principles-guidance

Annex A – List of respondents

Association of Policing and Crime Chief Executives

Association of Police and Crime Commissioners

Chief Police Officers Staff Association

College of Policing

Cumbria Constabulary

Derbyshire Police and Crime Panel

Dyfed-Powys Police and Crime Panel

Essex Constabulary

Greater Manchester Combined Authority

His Majesty's Inspectorate of Constabulary and Fire and Rescue Services

Hertfordshire Constabulary

Independent Office for Police Conduct

Kent Police

Leicester, Leicestershire and Rutland Police and Crime Panel

Local Government Association

Mayor's Office for Policing and Crime

National Association of Police, Fire and Crime Panels

National Police Chiefs' Council

Northamptonshire Police Fire and Crime Panel

Office of the Police and Crime Commissioner for Avon and Somerset

Office of the Police and Crime Commissioner for Cheshire

Office of the Police and Crime Commissioner for Cleveland

Office of the Police and Crime Commissioner for Cumbria

Office of the Police and Crime Commissioner for Devon, Cornwall and the Isles of Scilly

Office of the Police and Crime Commissioner for Dorset

Office of the Police and Crime Commissioner for Durham

Office of the Police and Crime Commissioner for Dyfed-Powys

Office of the Police and Crime Commissioner for Gloucestershire

Office of the Police and Crime Commissioner for Gwent

Office of the Police and Crime Commissioner for Hampshire

Office of the Police and Crime Commissioner for Hertfordshire

Office of the Police and Crime Commissioner for Humberside

Office of the Police and Crime Commissioner for Kent

Office of the Police and Crime Commissioner for Lancashire

Office of the Police and Crime Commissioner for Leicestershire

Office of the Police and Crime Commissioner for Lincolnshire

Office of the Police and Crime Commissioner for Merseyside

Office of the Police and Crime Commissioner for Norfolk

Office of the Police and Crime Commissioner for Northumbria

Office of the Police and Crime Commissioner for North Wales

Office of the Police and Crime Commissioner for Nottinghamshire

Office of the Police and Crime Commissioner for South Wales

Office of the Police and Crime Commissioner for South Yorkshire

Office of the Police and Crime Commissioner for Surrey

Office of the Police and Crime Commissioner for Sussex

Office of the Police and Crime Commissioner for West Mercia

Office of the Police and Crime Commissioner for West Midlands

Office of the Police, Fire and Crime Commissioner for Essex

Office of the Police, Fire and Crime Commissioner for Northamptonshire

Office of the Police, Fire and Crime Commissioner for North Yorkshire

Police Federation of England and Wales

Police Superintendents' Association

South Yorkshire Police and Crime Panel

Welsh Local Government Association

West Yorkshire Combined Authority

West Midlands Police



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