



# Comparative overview of police governance arrangements

Report for HM Chief Inspector of Constabulary in  
Scotland

## Aim

The purpose of this report is to provide a comparative overview of police governance arrangements to inform HMICS' ongoing thematic inspection of the Scottish Police Authority (SPA). This report examines police governance arrangements in six international jurisdictions with an aim to identify best practice in line with the inspection terms of reference.

## Scope & Methodology

The inspection aims to examine issues relating to the SPA's role, responsibilities and relationships with key stakeholders. The inspection will also consider the independence of the SPA, the operational responsibility of the Chief Constable and how the SPA exerts effective governance in this context<sup>1</sup>. In order to provide examples of good practice along these key areas, a comparative overview of six international jurisdictions was undertaken to examine different models of police governance. In particular, the comparative work focused on how different models of police governance are implemented in practice, how powers of governance are shared between key stakeholders and how the delicate balance between operational independence of chief officers and legitimate democratic oversight is achieved. The three models identified for the comparison were:

- A centralised model where the responsibility of police governance sits with the relevant Minister
- A power-sharing model where the powers of police governance are shared between local and central government
- A centralised model where the responsibility of police governance is delegated to an independent or arms-length policing Authority or a Joint Board

The jurisdictions – New Zealand and Finland – both reflective of the first model, England and Wales and the Netherlands (to a lesser extent) – based upon the second model, and Northern Ireland and Republic of Ireland

– both representative of the third model, were selected for this comparison. All six jurisdictions are liberal democracies, their respective police forces and police governance arrangements have undergone a series of reforms in the recent past – as such all six jurisdictions have experienced challenges associated with structural reform similar to those

experienced in Scotland. In addition, all of these jurisdictions are faced with dilemmas inherent to democratic governance of the police, such as ensuring robust accountability of the police in the public interest, providing mechanisms for separation between the police and partisan political control, and delivering professional management and financial scrutiny in order to deliver efficiency savings. In all of these respects these six jurisdictions provide important lessons for police governance arrangements in Scotland and justify selection as meaningful comparators.

The research was carried out between 01<sup>st</sup> March and 30<sup>th</sup> April 2019 and consisted of extensive review of the relevant legislation, official policy documents (available in the public domain), external evaluations, and academic peer-reviewed articles from all six jurisdictions. A written contribution was also received from Dr Jarmo Houtsonen (Finland).

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<sup>1</sup> HM Inspectorate of Constabulary in Scotland: Thematic Inspection of the Scottish Police Authority Terms of Reference, para. 5, March 2019.

## Model 1: Centralised, direct democratic model

In a centralised model policing services are provided under a national framework and the chief of police is held to account by a relevant Minister and external oversight bodies (see fig.1 below). The Minister is also answerable to the Cabinet and the parliament. The management style is top-down, however, senior officers have autonomy over financial spending, operational policing, and the day to day running of the police organisation. Whilst the organisation of police governance is centralised, there is legislative provision for local policing and collaboration with local authorities and community stakeholders. This model of police governance relies on police organisations to deliver local policing within the prescribed statutory framework and to ensure equitable provision of specialist resources. Performance is managed and assessed centrally and performance measures include targets specifically related to local policing, however, there is a lack of formal mechanisms of local governance or formal local input into policing policy or resource allocation. The practical implementation of this model is assessed below with relation to police governance arrangements in New Zealand and Finland.



Fig. 1 - Example of key stakeholders and their respective roles in a centralised governance model

## New Zealand

New Zealand has a single national police force consisting of approximately 12,000 employees led by the Commissioner of the police who is held accountable by the Minister of Police. Locally, the police service is structured around 12 districts. Each of the 12 districts has a District Commander and a team of Area Commanders who manage day to day operations. District divisions do not have formal mechanisms of local governance, instead they are administered from Police National Headquarters. Other specialist services such as forensics and administrative support are also managed and delivered nationally.

### Legislative provision

Policing Act 2008 sets out a broad community-focused role for the New Zealand Police setting out its functions in section 9 which include *(a) keeping the peace, (b) maintaining public safety, (c) law enforcement, (d) crime prevention, (e) community support and reassurance, (f) national security, (g) participation in policing activities outside New Zealand, and (h) emergency management*. The 2008 Act (s.10) also places an emphasis on partnership working and clearly acknowledges that the police will need to work co-operatively with other public bodies, including local authorities, in order to fulfil its statutory functions.

The Commissioner of the New Zealand Police is also its chief executive officer, and has responsibility for administration and management of the entire police service. The post of commissioner is a fixed-term post for a maximum of five years. Whilst the Commissioner is accountable to the Minister of Police, the position is considered a Crown appointment and the State Services Commission (responsible for all public service appointments) has responsibility for managing the process of appointments of the commissioner and any deputy commissioners (s.14 Policing Act 2008).

## Operational Independence

The responsibilities and independence of the Commissioner is set out clearly within the legislative framework. Section 16 (1) of the Policing Act 2008 sets out the responsibilities of the Commissioner to include *(a) carrying out the functions and duties of the police; (b) the general conduct of the police; (c) the effective, efficient, and economical management of the police; (d) tendering advice to the Minister and other Ministers of the Crown; (e) giving effect to any lawful ministerial directions.*

The 2008 Act section 16 (2) also sets out areas where the Commissioner *must* act independently of any Minister, or any government representatives. Specifically, these areas include:

- (a) the maintenance of order in relation to any individual or group of individuals; and
- (b) the enforcement of the law in relation to any individual or group of individuals; and
- (c) the investigation and prosecution of offences; and
- (d) decisions about individual Police employees

In relation to (d) above, the Commissioner is responsible for the appointment of all police employees (police staff and constables) as necessary for the efficient exercise and performance of the powers, functions, and duties of the Police (s.18(1), 2008 Act). The 2008 Act (s.30 (4)) also prevents the Minister or their representatives from undue political interference in operations carried out by police employees (constables and police staff).

## Governance and Accountability

The Minister of Police has the overall responsibility for oversight of the general conduct, the discharge of powers and functions, and the effective, efficient, and economical management of the Police. The Minister can also use residual powers such as the ability to order ministerial inquiries and establish commissions of inquiry. External democratic oversight of the New Zealand Police is provided by parliamentary select committees, particularly through the Justice Committee. Police policies, practices and procedures (as well as alleged staff misconduct or neglect of duty) can also be subject to investigation, review and report by the Independent Police Conduct Authority (IPCA). The IPCA has the

same powers as a Commission of Inquiry and they can summon witnesses and gather evidence<sup>2</sup>. Police are required to provide all information and assistance needed to carry out investigations. The IPCA is completely independent of the government and its chair is appointed by the

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<sup>2</sup> Independent Police Conducts Authority. Available at: <https://www.ipca.govt.nz/Site/about-us/Legislation-and-Accountability.aspx>

Parliament for a five-year term. The powers of the IPCA are set out in legislation (Independent Police Conduct Authority Act 1988, Crown Entities Act 2004) and it is accountable to the Parliament.

The Office of the Ombudsman also provides an independent avenue for complaints against the police particularly in relation to individual abuses of power.

The New Zealand Police, like other public bodies is required to submit an Annual Report of performance and financial audit to the Minister of Police. Further, the Auditor General has powers under the Public Audit Act 2001 and Public Finance Act 1989 to examine the effectiveness and efficiency of public bodies including the New Zealand Police. The responsibility for the preparation of the annual financial statements, statements of expenses and capital expenditure sits with the Commissioner and it is their duty to ensure internal controls are in place to provide reasonable assurance as to the integrity and reliability of financial reporting. The role of the Auditor General is not limited to financial scrutiny. Following a Commission of Inquiry into allegations of mishandling of sexual abuse cases by the New Zealand Police, the Auditor General was tasked with monitoring the changes implemented by the police and to ensure all of the recommendations were implemented in letter and spirit. Over a 10-year period, the Auditor General conducted ongoing reviews and submitted progress reports to the Parliament<sup>3</sup>.

### **Lessons for Scotland**

In New Zealand, police governance arrangements and the relative roles and responsibilities of the Minister of Police and the Commissioner are well-developed and understood. The responsibilities of the Commissioner are clearly set out in statutory terms and the Ministerial “no-fly zone”, i.e. areas where Ministers, or their representatives cannot interfere are also part of the legislation. The Commissioner has full responsibility over budgets, appointments of police employees, fleet and estates and is held to account by the Minister, parliamentary committees (to whom the Minister is also answerable) and external public bodies such as the Auditor General.

In the absence of a board or a policing authority, the Commissioner of the police, as its chief executive officer can make corporate decisions affecting the police organisation without seeking approval from an external body which can often be considered a cumbersome bureaucratic exercise, as can be the case in Scotland. Clear legislative articulation of respective roles and responsibilities also ensures a healthy working relationship between the government of the day and the police. As such the police does not 'belong' to a political party and remains an independent professional instrument of the Crown. When a Minister of Police takes up post, the Commissioner issues a briefing which is published in the public domain for transparency. The briefing initiates a working relationship which is transparent and based upon ongoing dialogue and engagement over how the government's priorities and broader criminal justice objectives will be delivered with a clear timescale for future subject-specific briefings to the Minister. In addition, the briefing also outlines areas where future legislation can help the police in fulfilling their functions. By transparently outlining an action plan, the Commissioner also publicly commits to achieving certain outcomes - that can be used to assess the performance of the police.

Performance management does not rely solely on qualitative outcomes, which can often be difficult to measure. The government sets specific quantifiable targets in order to drive improvements in service delivery in the public interest. These targets range from faster response times to greater partnership working (see fig. 2 below).

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<sup>3</sup> Commission of Inquiry into Police conduct. Available at: <https://www.police.govt.nz/about-us/nz-police/commission-inquiry>



Fig. 2 - Example of performance targets set by the New Zealand Government<sup>4</sup>

Performance reporting from the New Zealand police is also reflective of a mature process. Internal performance measures incorporate government’s priorities, police-specific performance targets and community safety objectives. Reporting against those measures is transparent, often acknowledging the challenges in meeting certain targets (see fig. 3).



Fig. 3 - Example of Performance Measures in relation to police response times<sup>5</sup>

Overall, the centralised model of police governance in New Zealand provides a clear demarcation of respective roles and responsibilities, ensures swift decision-making, robust performance management in the public interest and a greater synergy between the police and elected representatives.

<sup>4</sup> New Zealand Police briefing to the Incoming Minister of Police, October 2017. Available at: <https://www.police.govt.nz/sites/default/files/publications/briefing-to-the-incoming-minister-dec2017.pdf>

<sup>5</sup> New Zealand Police, Annual Report 2017-2018. Available at: <https://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf>

## Finland

The Police of Finland, *Polisi*, is a national police force comprising of 9,700 staff (7,200 police officers<sup>6</sup>) organised in two-tiers. The national units include the National Bureau of Investigation, responsible for specialist services such as serious and organised crime and Police University College, responsible for training and recruitment. At a regional level, the organisation is divided into 11 Police Departments. Each of the 11 Departments is headed by its own Police Chief. While Police Departments are responsible for provision of all policing services including maintenance of public order and security, the dispatch of emergency services is managed centrally by a joint blue-light Emergency Response Centre.

The Ministry of Interior has overall responsibility for governing and maintaining the entire police service including performance management, allocation of resources and strategic planning. The National Police Board, subordinate to the Ministry of Interior and led by the National Police Commissioner is responsible for planning, directing, developing and supervising day to day police operations and related support functions including recruitment and administration of police staff. The 11 departmental Police Chiefs have responsibility over budgets, local service delivery and partnership working. The performance of local departments is managed centrally through the National Police Board.

### Legislative Provision

The role and function of the Police of Finland is set out in the Police Act 2011. According to s.1, the duty of the police is to *secure the rule of law; maintain public order and security; prevent, detect and investigate crimes; and submit cases to prosecutors for consideration of charges*. The Finnish legislation also acknowledges the importance of partnership working and collaboration and sets out that *the police work in co-operation with other public authorities and with communities and residents in order to maintain security, and that they engage in international cooperation pertaining to their duties*. The legislation also explicitly includes finding missing persons as the statutory role of the police<sup>7</sup>.

The National Police Commissioner is responsible for managing, developing and overseeing the work of the National Police Board and the administrative sector of the police on behalf of the Ministry of Interior. There is no explicit mention of operational independence within

the legislation. However, the legislation does provide provisions for individual officer discretion particularly in relation to *postponing or refraining from taking actions* if it is deemed that the action would lead to an unreasonable conclusion (s.9, Police Act 2011).

### **Governance and Accountability**

The Government steers and monitors police organisation through the Ministry of Interior and day to day operations are managed and administered by the National Police Board, led by the National Police Commissioner.

The Ministry's tasks in relation to policing are legislative drafting, strategic planning and national direction of the police. The Ministry is organised into five departments: Police, Rescue Services, Migration, Border Guard, and Administration and Development. The Finnish Security Intelligence is also directly subordinate to the Ministry of the Interior. The Police Department of the Ministry of Interior, is responsible for the performance management of the National Police Board and the Finnish Security Intelligence Service. The Police Department's responsibilities cover police administration, public order and security, combating crime,

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<sup>6</sup> Annual Report 2016. Available at: [https://www.poliisi.fi/instancedata/prime\\_product\\_julkaisu/intermin/embeds/poliisiwwwstructure/61693\\_Poliisi\\_vuosik\\_2016\\_englanti.pdf?5dc5016222f2d588](https://www.poliisi.fi/instancedata/prime_product_julkaisu/intermin/embeds/poliisiwwwstructure/61693_Poliisi_vuosik_2016_englanti.pdf?5dc5016222f2d588)

<sup>7</sup> Police Act 2011. Available at: [http://www.finlex.fi/en/laki/kaannokset/2011/en20110872\\_20131168.pdf](http://www.finlex.fi/en/laki/kaannokset/2011/en20110872_20131168.pdf)

licensing, gambling policy, the private security sector and international affairs that concern the police. The Police Department is also responsible for co-ordinating action against human trafficking taken within the Ministry's branch of government. The Police Department comprises of four units:

- Legislative Affairs
- International and Legal Affairs
- Police Operations Coordination
- National Security Coordination

The operations of the Ministry and its Police Department are guided by the Government Program (and related Action Plan), and the Internal Security Strategy. The administrative branch's operational and financial planning is based on the four-year general government fiscal plan (including decisions around spending limits), annual budgets and performance agreements.

In Finland, public sector bodies are held to account by the relevant Ministry through a negotiated performance agreement. The Performance agreement is results-oriented, and includes resource allocation in relation to different policing priorities, crime rates, indicators of safety (e.g. for street safety), victim surveys, citizens' satisfaction with the police and number of solved crimes. The Ministry of Interior allocates the annual budget for the police and negotiates a performance contract with the National Police Board. The National Police Board then enters into a performance contract with each of the 11 Departmental Police Chiefs. This arrangement empowers the Police Chiefs to spend their budgets locally and they are held to account through top-down managerial performance targets. The reporting of performance and finances occurs three times a year and a final report is submitted just before the beginning of the process of the performance negotiations for the next fiscal year. The Police Chiefs are required to meet with the National Police Board at regular intervals and report on progress against key performance goals, and financial spending. Budget allocation for each fiscal year is negotiated to meet local requirements rather than a fixed amount for each local department. Funding for ICT, and estates is administered nationally and is not included within local budgets. The National Police Board has an Internal Audit Unit that routinely monitors national and local spending. The Audit Unit provides information and advice to the National Police Board on financial management, adequacy of the internal control environment and risk management. The Audit Unit can also perform inspections on behalf of the National Police Commissioner and make recommendations.

In addition to ongoing financial scrutiny and performance management, public sector organisations in Finland have a responsibility to ensure strict oversight of legality in their own areas of responsibility to ensure all public bodies are operating within the legal framework. Within policing, the oversight of legality comprises handling of complaints, internal investigations, monitoring of the processing of personal data, and other inspections on the instructions of the Minister. The Ministry of the Interior produces an annual report on the oversight of legality.

The Parliamentary Ombudsman and the Chancellor of Justice provide external accountability of the Ministry of Interior's functions. The National Audit Office also provides external financial oversight of all public sector bodies including the police.

## Lessons for Scotland

The Finnish model provides an example of joined-up approach to governance. The budget and performance negotiation process travels down from the government, through the Ministry of Interior and the National Police Board to the 11 Police Departments, and the performance and financial reporting travels upstream. Strategy, finances and operations in every government department are closely linked together.

Management by results is an overall performance framework that is applied throughout all Ministries and administrative sectors. Strategy, performance management and funding decisions appear to be centralised, however, all of these decisions use local reporting and performance as an evidence base, making it a negotiated process. Performance management is robustly based around targets and operations and activities (fig. 4 below provides an example of key performance measures around operational response). While targets are set nationally, there is room for local initiatives and priorities to be included within the performance contract.

Operational readiness time, average in minutes (from police perspective)	2012	2013	2014	2015	2016
Urgency category A	9.2	9.4	9.5	9.3	9.4
Urgency category AB	16.7	17.4	17.9	17.8	17.9

The operational readiness time comprises the assignment waiting time, patrol delay, and the minimum driving time to the scene. The time spent in processing the assignment by the emergency rescue services is not included.

Operational readiness time, average in minutes (from client perspective)	2012	2013	2014	2015	2016
Urgency category A	12.2	12.4	12.6	12.3	12.3
Urgency category AB	21.3	22.2	23.0	22.9	23.2

Operational readiness time (client perspective) measures the time from when a citizen's emergency call is answered to the arrival of a police patrol at the scene, including all delays.

Fig. 4 - Example of a key performance measure for the Police of Finland<sup>8</sup>

Whilst mechanisms of public accountability of the police are centralised and delegated to internal and external oversight bodies, there is an established process of collaborative work with key public stakeholders through an Advisory Board nationally and advisory committees for each of the 11 Police Departments locally. The task of the Advisory Board and the advisory committees is to follow developments in areas relevant to police operations, monitor police performance, propose initiatives aimed at developing the work of the police, provide advice on matters concerning the police and to deal with any other matters submitted for its consideration. The national Advisory Board is appointed by the Government for a period of four years. Locally, however, the members of advisory committees are elected by municipal and town councils and includes representatives from the third sector.

Overall, the allocation of funds to local Police Chiefs under a jointly agreed performance framework provides for a good example of national steering and local empowerment. The establishment of police advisory committees, comprising of third-sector representatives and key local stakeholders can also provide local police chiefs with more negotiating power during the budget allocation process, particularly where local priorities and initiatives may need to take precedence over centralised targets.

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<sup>8</sup> *Poliisi*, Annual Report 2016. Available at :  
[https://www.poliisi.fi/instancedata/prime\\_product\\_julkaisu/intermin/embeds/poliisiwwwstructure/61693\\_Poliisi\\_vuosik\\_2016\\_englanti.pdf?5dc5016222f2d588](https://www.poliisi.fi/instancedata/prime_product_julkaisu/intermin/embeds/poliisiwwwstructure/61693_Poliisi_vuosik_2016_englanti.pdf?5dc5016222f2d588)

## Model 2: Localised-tripartite governance

This type of governance arrangement provides formal separation of powers between central government, local government and the police. Local government has responsibility over local police budgets, and has a formal input in policing priority and strategy setting. Central government has a role in distributing national funding and ensuring police forces in all local areas are effective and efficient and it is answerable to the Parliament for all public spending. The chief of the police (for instance chief constables in England and Wales) has responsibility over resource allocation, police staff, and day to day management and operation of the force. In addition, external bodies such as an inspectorate or a national auditor provides independent scrutiny and oversight and reports to all governance bodies including the parliament. England and Wales and the Netherlands (to a lesser extent) represent this model of police governance, as examined below.

### England and Wales

Of the six jurisdictions considered in this report, the English and Welsh model provides a strong example of devolved localised police governance. The Police Reform and Social Responsibility Act 2011 abolished local police authorities and created the role of the Police and Crime Commissioner (PCC) for all police forces outside London<sup>9</sup>. The PCCs are directly elected and draw on their mandate to influence local policing priorities and strategic objectives. The powers of the PCCs are wide-ranging and clearly set out in legislation. The PCCs are held to account by Police and Crime Panels that form part of local government administration for each local authority. The Chief Constables are responsible for the day to day administration of the police force and are held to account by their respective PCCs for financial spending and service delivery against priorities.

### Legislative Provision

The main functions of the PCCs are to *secure the maintenance of the police force* in their respective area and to *secure that the police force is efficient and effective* (s.1 (6), 2011 Act). Furthermore, the PCCs are also responsible for holding the chief constable to account for (a) *functions of the chief constable*, and (b) *the functions of persons under the direction and control of the chief constable* (s. 1 (7), 2011 Act). In addition, it is also the responsibility of the PCCs to hold the chief constable accountable for *engagement with local people* (s.1 (8) (e)), *value for*

*money* (s.1 (8) (f)), *equality and diversity* (s.1 (8) (g)) and *safeguarding of children and promotion of child welfare* (s.1 (8) (h)). The PCCs also have formal powers to appoint and dismiss chief constables in their relevant area (s.38, 2011 Act) and are required to prepare an annual police and crime plan (s.5).

The 2011 Act places the *direction and control* of police forces under their respective chief constables (s.2(3)). Further, chief constables are required to *exercise the power of direction and control in such a way as is reasonable to assist the relevant police and crime commissioner to exercise the commissioner's functions* (s.2 (5)). The 2011 Act also places a statutory duty on chief constables to engage with local communities and *to make arrangements for obtaining views of persons within each neighbourhood about crime and disorder* (s.34(1)). The chief constable must also have regard to the police and crime plan issued by the PCC (s.8(2)).

The 2011 Act has established Police and Crime Panels to hold the PCCs to account. The main functions of a Police and Crime Panel are to review the Police and Crime Plan and the PCCs Annual Report, and make improvement recommendations (s. 28). Any reports or recommendations made to the PCC by the Police and Crime Panel have to be published and submitted to the relevant local authority (s.28 (7) and (8)).

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<sup>9</sup>In London, The Mayor's Office for Policing and Crime is responsible for the governance of the metropolitan police district (s.3, 2011 Act). Since 2017, the Mayor of Greater Manchester has also assumed the duties of Police and Crime Commissioner.

The 2011 Act is supplemented by a Policing Protocol Order 2011. The Protocol Order sets out the roles and responsibilities of PCCs, chief constables and Police and Crime Panels (including the London Assembly Police and Crime Panel) and how their functions will be exercised in relation to each other. It sets out the high-level financial responsibilities of the PCC and the Chief Constable, making clear that the former is ultimately accountable to the public for the management of the Police Fund while the latter has day to day responsibility for managing their allocated budgets after these have been approved by the PCC. The respective roles and responsibilities are considered in further detail in the following sections.

### Operational Independence

While the 2011 Act does not define what *direction and control of police forces* means in practice, the Policing Protocol Order<sup>10</sup> sets out the respective roles and responsibilities of the PCCs and chief constables. According to the Protocol Order the PCCs are responsible for *delivery and performance of the police* on behalf of the electorate. As such PCCs draw on their electoral mandate to develop and shape the strategic objectives for their force area in consultation with the chief constable (para. 14). The Protocol directs the PCC not to interfere with the operational independence of the police force and the chief constable who leads it (para. 18). Whilst the Protocol maintains that the chief constable is responsible for direction and control over the force and staff, the chief constables are required to provide any information that may be required by the PCC to enable exercise of their functions – so long as the information request does not interfere with their operational independence (para. 19). The chief constable is accountable to the law for the exercise of police powers, and to the PCC for the delivery of efficient and effective policing, management of resources and expenditure by the police force (para. 22). The protocol reiterates, however, that at all times the chief constable, their constables and staff, remain operationally independent in the service of the communities that they serve.

The scope of the powers of the PCCs were tested in a recent court case where a PCC sought to dismiss a chief constable. In, *R v PCC South Yorkshire*<sup>11</sup>, the High Court has allowed a claim for judicial review by the former Chief Constable of South Yorkshire Police challenging the Police and Crime Commissioner for South Yorkshire's decision to require him to resign following the verdicts in relation to the Hillsborough deaths. This was the first case to examine the scope of a PCC's powers to require a Chief Constable's resignation, granted under the Police and Social Responsibility Act 2011. The Court found that the PCC's exercise of that power in this case was "irrational" and had no reasonable foundation.

While the decision, in favour of the chief constable, focused on the failure of the PCC to take into account the views expressed by HM Chief Inspector of Constabulary (also against dismissal) and failing to provide a 'rational' decision for the dismissal, the High Court also sought to clarify the position with regards to the operational independence doctrine. In the judgement, the High Court noted that:

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<sup>10</sup> The Policing Protocol Order 2011. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/117474/policing-protocol-order.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117474/policing-protocol-order.pdf)

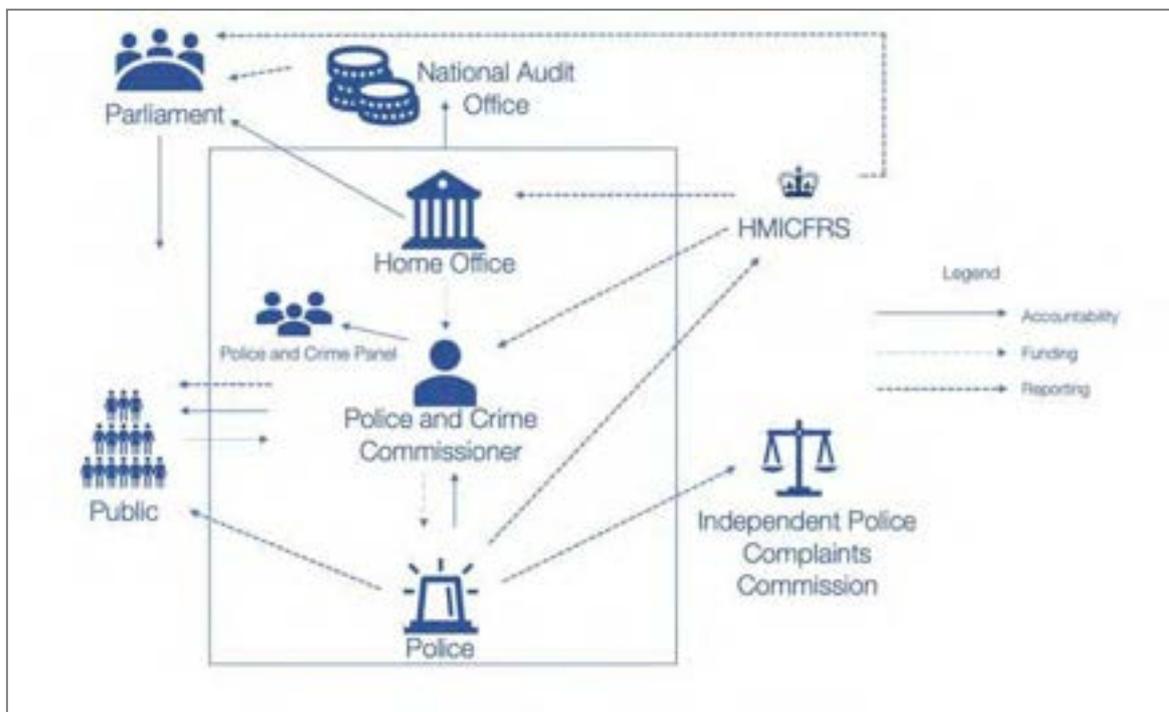
<sup>11</sup> *R v PCC South Yorkshire et al* QBD 2017. Full judgement available at: <https://www.judiciary.uk/wp-content/uploads/2017/06/the-queen-oao-david-crompton-judgment-final.pdf>

*PCC is obliged to hold the Chief Constable to account for every function he performs. In our judgment, matters relevant to operational independence are not excluded from the scope of the PCC's powers of scrutiny (para. 78). The Act adopts a more nuanced approach than the common law in this regard, recognising in the Protocol it introduces both the importance of operational independence and an important competing imperative, namely democratic oversight of the police. It is, in our judgment, impossible to see operational independence as being beyond the supervision of the PCC (para. 79)*

The High Court's observations are open to further challenge and interpretation by the courts, but it is evident that the 2011 Act has not provided sufficient clarity on the balance between operational independence and legitimate democratic accountability. Despite the lack of legislative clarity, the evidence suggests that the relationships between the PCCs and their chief constables have started to mature and the respective roles and responsibilities are generally understood.

### Governance and Accountability

While the PCCs are mainly responsible for the governance and accountability of their respective police forces, there are other key stakeholders with complex lines of reporting and accountability (see fig. 5 below) involved.



The Home Office has the overall responsibility for policing and is answerable to the Parliament for policing, public safety, crime, counter-terrorism and effective use of public funds. The Principal Accounting Officer for the Home Office is responsible for providing assurance to the Parliament about the expenditure of public money. In 2018/19 the Home Office provided £11.3bn for policing to local police and crime commissioners and an additional £757m for counter-terrorism and £29m for armed policing <sup>12</sup>. Central government funding is

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<sup>12</sup> Home Office Accounting Officer System Statement (2018)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/739547/AOSS2018AccountingOfficerSystemStatementv19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739547/AOSS2018AccountingOfficerSystemStatementv19.pdf)

allocated under a Financial Management Code of Practice (FMCP)<sup>13</sup>. The FMCP applies to all PCCs and chief constables and has to be considered in the discharge of their respective duties.

The PCC within each force area has a statutory duty and electoral mandate to ensure an efficient and effective police service and to hold the police to account on behalf of the public. The PCC is the recipient of all central government funding and grants in relation to policing and crime reduction, as well as local government funding through direct local taxation (e.g. council tax precept). The FMCP requires the PCC and the chief constable to appoint a Chief Finance Officer. The legislation does not prevent the same individual from being the Chief Finance Officer for both the PCC and chief constable and it is up to both office holders to take into consideration any potential conflicts of interest. Both Chief Finance Officers are responsible for proper financial administration, however, the Chief Finance Officer for the PCC has further legislative duties with regards to statutory reports relating to the adequacy of the overall resource available to meet police force expenditure. The Chief Finance Officer is also responsible for reporting any potentially unlawful decisions by the PCC on expenditure and serves as the PCC's professional adviser on financial matters.

External financial scrutiny and assurance is provided by the National Audit Office nationally and external auditors locally. HM Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS) also carries out inspections and reports on the efficiency and effectiveness of police forces. The PCC can commission HMICFRS to carry out an inspection within their force area and the Home Secretary can direct HMICFRS to look into and report on any issue. HMICFRS may also carry out inspections of police forces on its own initiative if it considers that the performance or circumstances of a force merit it, however, the powers of HMICFRS currently do not extend to the office of the PCC or the College of Policing. Further independent scrutiny is provided by the Independent Police Complaints Commission (IPCC) that investigates the most serious complaints and incidents involving the police, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint. The remit of the IPCC has been extended to include complaints against PCCs and their deputies.

With regards to local policing, PCCs hold chief constables to account primarily through performance and delivery against the priorities set out in the Police and Crime Plan. The PCCs have established different approaches to developing the Police and Crime Plans. In general, the Police and Crime Plans take into account data from public and stakeholder consultations, victim surveys, existing community safety partnership priorities, and advisory groups but there is variation in practice across England and Wales. The Police and Crime Plan for the Greater Manchester Police, for instance, was developed following extensive consultation with members of the public, blue light emergency services including the police, community safety partners, health services, voluntary and third sector organisations. The plan sets out three overarching priorities which are broad enough to include the breadth of the police work, i.e. *keeping people safe, reducing harm and offending and strengthening communities and places*. The Plan does not apply only to the police and has a wider criminal justice, community safety, and public engagement focus<sup>14</sup>. Conversely, the priorities<sup>15</sup> for Northumbria Police range from very broad to more focused, and include *domestic and sexual abuse, putting victims first, effective criminal justice, reducing anti-social behaviour, cutting crime, and community confidence*. The priorities were informed by demand management work led by Northumbria Police, safer communities and victim satisfaction surveys, community safety partnerships, stakeholder consultation, public consultation (led by the office of the PCC), and advisory groups representing communities protected by the Equality Act 2010. Within the Police and

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<sup>13</sup> Home Office, Revised Financial Management Code of Practice (2018). Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727772/CCS207\\_CCS0718021968-001\\_HO\\_FMCP\\_2018\\_Print\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727772/CCS207_CCS0718021968-001_HO_FMCP_2018_Print_.pdf)

<sup>14</sup> Standing Together, Police and Crime Plan for Greater Manchester. Available at: <https://www.greatermanchester-ca.gov.uk/media/1268/police-and-crime-plan-standing-together.pdf>

<sup>15</sup> Northumbria Police and Crime Plan 2017-2021. Available at: <http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2017/03/Police-and-Crime-Plan-2017.pdf>

Crime Plan for each area, the PCCs outline how they intend to hold the chief constable to account (see. Fig. 6 below for an example from Northumbria PCC).



Fig. 6 - An example of different mechanisms of governance and accountability implemented by the Northumbria Police and Crime Commissioner in the Police and Crime Plan 2017-2021

The performance reporting for each police area mostly involves statistical information relating to the key priorities. Regular public meetings are held in each police force area on a monthly, bi-monthly or quarterly basis. PCCs also meet with their chief constables regularly and there are varying practices of private but formally recorded meetings and informal meetings<sup>16</sup>.

## Lessons for Scotland

While the governance arrangements and the role of the PCCs in England and Wales are still maturing, it is without contention that under the 2011 Police Reform Act, PCCs have been given substantial powers. The end of national target setting by the Home Office has been matched by the decision not to intervene in local disputes between a PCC and their chief constable. One consequence of this has been a significant increase in the turnover of chief constables who have found themselves in dispute with their PCC. However, as exemplified by the case discussed above (*R v PCC South Yorkshire*), courts and HMICFRS provide a degree of protection and external oversight over cases of chief constable dismissal.

Evidence suggests that all PCCs have developed localised approaches to governance and accountability, some of the more innovative initiatives taking place locally have resulted in greater partnership work on a regional basis and have been recognised nationally. For instance, a Home Affairs Committee review reported that:

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<sup>16</sup> Home Affairs Committee (2014) Police and Crime Commissioners: progress to date. Available at: <https://publications.parliament.uk/pa/cm201314/cmselect/cmhaff/757/757.pdf>

*Some commissioners are collaborating on particular policy areas. For example, the three PCCs in the North East have developed a regional strategy to combat violence against women and girls. On counter-terrorism, PCCs in the South West have formed a dedicated team, whilst those in the South East have created a dedicated unit that has a single chain of command with Thames Valley Police Force acting as the host force (para. 56<sup>17</sup>).*

The Home Affairs Committee also acknowledged that:

*PCCs have provided greater clarity of leadership for policing within their areas, and are increasingly recognised by the public as accountable for the strategic direction of their police force.*

The National Audit Office, in its landscape review of police accountability, also noted that PCCs are better able to hold policing to account and drive value for money particularly in comparison to local police authorities.<sup>18</sup>

A recurring critique of the PCC model has been that their introduction risks 'politicising' the police and reducing policing strategy and policy to debates around narrow partisan, party-political interests. However, this has not been the case in practice. Prominent policing scholars have observed that *there have been no notable examples of PCCs infringing operational independence. Nor as yet has there been a spurt of populist or extremist policy-making*<sup>19</sup>. The presence of a PCC has in fact served to provide a balance of power as PCCs are holding chief constables to account much more vigorously than the previous local police authorities. As the arrangements have had time to develop, the respective roles and responsibilities of both office holders are also becoming clearer with the PCC taking on a more strategic, public engagement role and chief constables running day to day policing. The public engagement and strategic policy role of the PCCs is far greater than the Scottish Police Authority has been able to achieve to date and there are some excellent examples of PCCs developing innovative ways of enhancing public participation in local policing policy-making, and chief constables have responded positively to such initiatives, some examples are provided below:

## Regional initiatives in the North East

Domestic and Sexual abuse has been a key priority in the North East of England across the three policing areas (Northumbria, Durham and Cleveland). In recognition of this, the three PCCs launched a joint regional strategy to tackle violence against women. As part of the new strategy, the local police forces piloted a scheme where outreach workers from the Wearside Women In Need (WWIN) refuge attend every domestic violence call with the police. Previously, officers giving the telephone number of the refuge to victims of domestic violence resulted in only 1 per cent of call ins. The presence of WWIN with the police has resulted in a 55 per cent increase in victims getting in touch following first contact. The performance reporting from the police has also focused on measures reducing the response times particularly with regards to responding to victims of domestic and sexual abuse (see fig. 7 for an example). The PCC for Northumbria also led the work on safeguarding women in the night time economy. Working collaboratively with the police, the council, and the security industry a course for door staff was developed to provide additional training on safeguarding vulnerable women and girls. The safeguarding training gained national recognition and is now a mandatory part of the National Security Industry Authority curriculum and has also been incorporated in the training materials by the College of Policing.

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<sup>17</sup> Home Affairs Committee (2014) Police and Crime Commissioners: progress to date. Available at: <https://publications.parliament.uk/pa/cm2014/cmselect/cmhaff/757/757.pdf>

<sup>18</sup> National Audit Office (2015) Police Accountability: Landscape review. Available at: <https://www.nao.org.uk/wp-content/uploads/2014/01/Police-accountability-Landscape-review.pdf>

<sup>19</sup> Loader I and Muir R and (2016) Four years on from the first UK police commissioners, it's time to get ambitious. Available at: [http://www.police-foundation.org.uk/2017/wp-content/uploads/2017/06/embracing\\_pccs.pdf](http://www.police-foundation.org.uk/2017/wp-content/uploads/2017/06/embracing_pccs.pdf)

An overall better policing response and support services for victims with complex needs and those affected by domestic and sexual abuse						Domestic and Sexual Abuse
	Threshold	Rolling 12 month data to...			12 months to...	
		March 2018	June 2018	September 2018	November 2017	November 2016
Percentage of domestic abuse victims satisfied with the policing response provided (100% average compared per annum)						
6. Initial contact	95% and above	97% <span style="color: green;">▲</span> +1.5	96% <span style="color: green;">▲</span> +1.7	97% <span style="color: green;">▲</span> +1.6	98% <span style="color: green;">▲</span> +1.2	97% <span style="color: green;">▲</span> +1.6
7. Response time	90% and above	92% <span style="color: green;">▲</span> +1.22	91% <span style="color: green;">▲</span> +1.24	91% <span style="color: green;">▲</span> +1.24	93% <span style="color: green;">▲</span> +1.8	92% <span style="color: green;">▲</span> +1.23
8. Action taken	90% and above	89% <span style="color: red;">▼</span> +1.23	87% <span style="color: red;">▼</span> +1.27	88% <span style="color: red;">▼</span> +1.28	90% <span style="color: green;">▲</span> +1.22	88% <span style="color: red;">▼</span> +1.26
9. Follow-up	90% and above	90% <span style="color: red;">▼</span> +1.28	89% <span style="color: red;">▼</span> +1.30	87% <span style="color: red;">▼</span> +1.28	88% <span style="color: red;">▼</span> +1.25	88% <span style="color: red;">▼</span> +1.27
10. Treatment	90% and above	90% <span style="color: green;">▲</span> +1.18	94% <span style="color: red;">▼</span> +1.18	95% <span style="color: green;">▲</span> +1.17	96% <span style="color: green;">▲</span> +1.15	94% <span style="color: red;">▼</span> +1.18
11. Whole experience	90% and above	92% <span style="color: green;">▲</span> +1.21	92% <span style="color: green;">▲</span> +1.22	92% <span style="color: green;">▲</span> +1.21	93% <span style="color: green;">▲</span> +1.18	92% <span style="color: green;">▲</span> +1.21
<b>More confidence in the reporting of domestic and sexual abuse</b>						Domestic and Sexual Abuse
12. Percentage of domestic abuse victims who are confident to report further abuse to the police again	90% and above	89% <span style="color: red;">▼</span> +1.21	93% <span style="color: red;">▼</span> +1.21	94% <span style="color: red;">▼</span> +1.18	95% <span style="color: green;">▲</span> +1.17	94% <span style="color: red;">▼</span> +1.18
13. Percentage who felt safer following police response	Monitor			98% <span style="color: green;">▲</span> +1.9%	NA	97% <span style="color: green;">▲</span> +1.3%

Fig. 7 - An example of performance measures and reporting, Northumbria Police<sup>20</sup>.

## Victim Support in South Yorkshire

The PCC for South Yorkshire provided additional grants to Victim Support for the provision of a Young Witness Service. The service helps young people and their families to prepare for the criminal justice process with priority given to young victims of child sexual exploitation. The PCC also developed local restorative justice processes in collaboration with South Yorkshire Probation Trust, Victim Support and Remedi (a specialist organisation working to promote the use of restorative justice). The extra funding for restorative justice practices and for more probation officers locally has sought to reduce reoffending.<sup>21</sup>

## Derbyshire and partnership working

The former PCC in Derbyshire lobbied for wildlife crime as a policing priority. Following a successful election, the PCC worked with the chief constable to establish wildlife crime not only as a priority but also to create a dedicated wildlife team comprising wildlife crime officers and special constables. By raising awareness and dedicating resources towards wildlife crime, the police were also able to develop an intelligence-led profile of links between wildlife crime and organised crime. The current PCC has made partnership working and collaboration a strategic priority and regularly commissions large and small grants to charities and third sector organisations within Derbyshire to help deliver the Police and Crime Priorities (see fig. 8 below). The PCC has also co-funded a supervised housing initiative to accommodate serious offenders upon release<sup>22</sup>.

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<sup>20</sup> Northumbria Police, Quarterly Performance Report 2018/19 Q3. Available at: <http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2015/06/2.-PCC-Plan-Quarterly-update-Oct-Dec-2018-v1.pdf>

<sup>21</sup> South Yorkshire PCC Annual Report 2016-2017. Available at: <https://southyorks.police.uk/media/2477/annual-report-201617.pdf>

<sup>22</sup> Derbyshire Police Crime and Commissioner Annual Report 2017-2018. Available at: <https://www.derbyshire-pcc.gov.uk/Document-Library/Your-PCC/PCCAnnualReport/2017-18/PCC-annual-report-NEW-2017-18-11-17.pdf>

Community Action Grant - large			
Name	Project	£ Amount	Police & Crime Plan Priorities
Al Hurraya	To deliver Crime reduction initiatives within the problematic areas of Derby City. They will work in partnership with key organisations within the voluntary sector and provide training which will enable them to provide long term strategic solutions within their communities.	25,000.00	1, 2, 3, 6
Chesterfield Locality Childrens Partnership	To work with 25 Junior and Primary Schools in Chesterfield. They will work with years 5 and 6 in each of these schools, to support children's knowledge on online safety and sexting.	13,500.00	1, 2, 3
Crossroads Derbyshire	The project will employ a part-time Court Support Worker with additional responsibility for representing MARAC cases. The post will ensure that victims of domestic abuse are appropriately prepared for and supported through the court system so that safe decisions are made regarding the children involved in domestic abuse cases.	18,875.00	1, 2, 3, 4
Diversity Watch Ltd	To improve diversity and cohesion between the Black Minority Ethnicity (BME) and the police in Derbyshire. They intend to work in-conjunction with Derbyshire police and help to raise awareness amongst the BME community on effective policing, and promote diversity within the police force.	25,703.00	1, 2, 6
Pathway of Chesterfield	To appoint a Volunteer and Activities Coordinator to engage homeless people and rough sleepers in meaningful activities.	25,000.00	1, 2, 3, 4
South Derbyshire Mental Health Association	To provide support, guidance and education additional to the current service provided at Benk House specifically to those who have mental health issues/learning difficulties and are at risk of entering or re-entering the criminal justice system.	25,000.00	1, 2, 3, 4
The Enthusiasm Trust	Supporting the cost of running a 12-month intensive preventative programme focusing on knife crime and youth violence for young people aged 11-18 in Derby.	25,000.00	1, 2, 5
St Peters Quarter Derby	To encourage and support the creation of a Radio Watch scheme amongst businesses in the Business Improvement District (BID) areas of Derby City including those registered with Derby Pub Watch.	18,700.00	1, 2, 7
<b>Total</b>	<b>9 projects</b>	<b>£192,635.00</b>	

Fig. 8 - An example of grants commissioned by the Derbyshire PCC to local third sector organisations

The above examples from different regions of England and Wales underline the influence a PCC can have shaping policing priorities that reflect the concerns and interests of their local communities. Despite these, and other good examples of locally led collaborative and partnership-based approaches to governance, the PCC model is not without criticisms, as examined below.

The Police and Crime Panels have thus far not been effective in holding their PCCs to account. This might suggest that to some degree the 2011 Act may have only served to solve one problem by replacing it with another. If before the Act the position of the chief constable was viewed in terms of accountability as being highly problematic this issue has now been replicated in terms of the power position enjoyed by the PCC.<sup>23</sup> The only direct mechanism of accountability for the PCCs is through the electorate. Between elections, the PCCs are able to enjoy considerable independence in decision making including appointments of deputies and chief officers.

The criteria for internal appointments for the office of the PCC have particularly been the subject of criticism. Independent research in collaboration with the Chartered Institute of Public Finance and Accountancy (CIPFA) found that as many as 16 PCCs had appointed friends, former colleagues and contacts as deputies on salaries

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<sup>23</sup>Bailey R (2017) Policing the PCCs: An evaluation of the effectiveness of PCPs in holding PCCs to account, Thesis for the degree of Doctor in Criminal Justice, Portsmouth University

up to £65,000<sup>24</sup>. While the PCCs were elected by the public, the role of a deputy commissioner is not subject to a democratic vote and does not have to be advertised.

The Committee on Standards in Public Life has also expressed concerns around a lack of transparency particularly with regards to procurement. In 2015<sup>25</sup>, It called on PCCs to publish a register of meetings held with external stakeholders.

There are also concerns in some areas where former police officers, who served under a chief constable, have been elected as their PCC. This has resulted in a difficult dynamic with a potential for underlying tensions playing out in the public domain. The Police Foundation has suggested that there should be a minimum period before a former police officer can stand in a PCC election in the same area.

Finally, the National Audit Office has noted that in the absence of a uniform national framework, it will become more challenging for the public to benchmark local police performance with other areas. The NAO has recommended that it is in the interests of central government, as the primary funding body, to maintain national oversight over local spending and performance to ensure minimum standards of efficiency and effectiveness<sup>26</sup>.

While the PCC model from England and Wales provides an excellent example of formally devolved local governance, the above concerns serve to show that the model is not without weaknesses. If power over local budgets and resource allocation is to be devolved, then a combination of the Finnish and English and Welsh model might be of value to Scotland. As noted earlier, in Finland the local budgets are allocated to Police Chiefs under a strict performance contract which is agreed upon by local and central stakeholders following a negotiated process. This provides central government a formal mechanism to maintain oversight over local police spending and performance. The mechanisms of local input in policing priorities and partnership working could be adopted from England and Wales where the existing arrangements continue to mature and there are numerous examples of local initiatives making an impact nationally.

## The Netherlands

In the Netherlands, the Ministry of Justice and Security has overall responsibility for the provision of policing and security. The Dutch national police, led by the Commissioner, has a Central Unit and the Police Services Centre and 10 Regional Units. Each Regional Unit, and the Central Unit has its own Chief Constable.

### Legislative Provision

According to the Dutch Police Act 2012, the police force is organised in three tiers; the national level, the regional level, and the level of the municipalities. There is no formal legislative provision for local policing in the Dutch Police Act 2012 and there is no established notion of operational independence. The authority over the police is exercised at local level and shared by two officials. The (non-elected) mayor (the head of the municipal government) has authority over the police with regard to the enforcement of public order and the service tasks of the police. Authority over the criminal investigation tasks of the police is in the hands of the public

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<sup>24</sup> Ludwig A, Norton M and Mclean I (2017) Resource Allocation Processes in Policing in Great Britain, CIPFA. Available at: <https://www.nuffield.ox.ac.uk/media/1971/2017-03-resource-allocation-processes-in-policing-in-great-britain-project-report.pdf>

<sup>25</sup> Committee on Standards in Public Life (2015) Tone from the top: Leadership, ethics and accountability in policing. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/439208/Tone\\_from\\_the\\_top\\_-\\_CSPL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439208/Tone_from_the_top_-_CSPL.pdf)

<sup>26</sup> para. 16, National Audit Office (2015) Police Accountability: Landscape review. Available at: <https://www.nao.org.uk/wp-content/uploads/2014/01/Police-accountability-Landscape-review.pdf>

prosecutor<sup>27</sup>. The formal powers over the administration of the police including finance, HR were transferred from regionally elected representatives to the Commissioner, who is held accountable by the Minister of Security and Justice.

### **Governance and Accountability**

The formal powers of police governance in the Netherlands are shared between central and local government. The Central Unit, led by the Commissioner, provides national oversight and support and focuses on serious organised crime and counter-terrorism and the Regional Units deliver local response and community-focused policing in municipalities in partnership with local stakeholders. The National Police Services Centre provides operational management and corporate services such as Finance, ICT, and HR with an overall purpose to remove bureaucracy from Regional Units and allowing local policing teams to focus on local policing. The municipal mayor has 'authority' over the local police, and is required to meet regularly with the public prosecutor and the local police chief in a localised tripartite arrangement. The municipal council retains the power to call the mayor to account and make decisions about the local public safety policy plan.

Research into the existing arrangements suggest that the creation of the National Police has had a negative impact on local policing, with the local mayors and municipal councils of the smaller municipalities losing much of their influence on local policing and national policy taking precedence over local initiatives<sup>28</sup>.

### **Lessons for Scotland**

In the Netherlands, the Dutch Police Act does not provide a clear view on how local policing should be delivered (other than prescribing a minimum number of community police officers) but it does retain a much stronger formal position for local government (especially the mayor) in the governance of the police. However, independent evaluations have found that the influence of mayors, particularly in smaller areas, is being eroded in the face of greater centralised control. There is also some evidence of top-down managerial influence which can often undermine the professional judgement of senior police officers. Overall, the governance arrangements in the Netherlands are not fully settled and tensions are apparent in the relationship between the Minister and the Commissioner. The government

in the Netherlands has called for a further evaluation of police governance arrangements which is due to report in 2022 and further changes to the governance and organisation of the police can be expected<sup>29</sup>. Therefore, whilst the formal separation of powers between central and local government could be something replicated in Scotland, in practice the model implemented in the Netherlands, as it currently stands, does seem to have more weaknesses. The English and Welsh model provides a much more robust example of formalised separation of powers between local and central government.

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<sup>27</sup> Terpstra J (2015) Police reform in the Netherlands and Scotland compared. Available at: [http://scottishjusticematters.com/wp-content/uploads/Pages-from-SJM\\_3-2\\_June2015\\_Police-Reform-in-Netherlands.pdf](http://scottishjusticematters.com/wp-content/uploads/Pages-from-SJM_3-2_June2015_Police-Reform-in-Netherlands.pdf)

<sup>28</sup> Terpstra J and Fyfe N (2015) Mind the implementation gap? Police reform and local policing in the Netherlands and Scotland. *Criminology and Criminal Justice* 15(5), pp.527-544.

<sup>29</sup> International Evidence from the Police and Fire Reform Evaluation Year 3 Report (2018). Available at: <https://www.gov.scot/publications/evaluation-police-fire-reform-year-3-national-key-informants-report/pages/12/>

## Model 3: Centralised model with a Policing Board/Authority

Under this type of governance model, the formal powers of police governance are delegated to a national policing authority or a joint board. The Authority is answerable to the relevant Minister and has overall responsibility over finances, policing policy and strategic objectives and is responsible for holding the police to account. The Authority provides formal separation between central government and the police. The Authority may be composed of elected representatives, professionals with corporate or public body experience or a combination of two. The practical applications of this model, with regional variations, are evident in Northern Ireland and the Republic of Ireland.

### Northern Ireland

In Northern Ireland, the development of police governance arrangements is rooted in the complex reform process initiated by the recommendations of the Independent Commission for Policing in Northern Ireland (The Patten Commission). The establishment of the Northern Ireland Policing Board (NIPB), in particular, stems from the recommendation that there needs to be a Policing Board that is sufficiently *empowered and equipped* to scrutinise police performance effectively (para. 6.3)<sup>30</sup>. The NIPB provides a formal separation between the Northern Ireland Executive (NI Executive) and the police, and has a broad remit of police governance and accountability. However, as examined below, on key issues such as the appointment and dismissal of senior officers the Board needs approval from the Justice Minister. Therefore, the NI Executive remains a key stakeholder in this centralised tripartite relationship.

### Legislative Provision

The Police (Northern Ireland) Act 2000 provides the statutory framework for the Police Service of Northern Ireland (PSNI) and police governance and accountability arrangements. The core policing principles, as set out in statute (s.31A)<sup>31</sup>, are to *secure the support of the local community* and to act in *co-operation with the local community*. The community-focused policing principles underpin the importance of the public as key stakeholders in policing and police governance. The general functions of the police include *to protect life and property, to preserve order, to prevent the commission of offences, and to take measures to bring the offender to justice where an offence has been committed* (s.32).

Through the Department of Justice, the NI Executive can set long term policing objectives following consultation with key stakeholders (s.24). The Department of Justice has established a Policing Policy and Strategy Division that provides governance and oversight of the PSNI and the NIPB. The Division also contributes to strategic planning, and ensures the provision of the legislative framework for police powers.

The general statutory functions (s.3, 2000 Act) of the NIPB are wide-ranging and its duties include to *maintain and secure an effective and efficient police service, to hold the chief constable to account, to monitor the performance of the police, to ensure compliance with legislation* (such as the Human Rights Act 1998), and to keep itself informed in matters relating to *the handling of complaints, trends and patterns in crimes committed, trends and patterns in police recruitment*, and to make arrangements for *obtaining the co-operation of the public with the police in the prevention of crime*. The Board also has powers to appoint and dismiss the chief constable but requires the approval of the Justice Minister. The NIPB also has a statutory duty to monitor the exercise of the functions of the National Crime Agency in Northern Ireland.

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<sup>30</sup> The Report of the Independent Commission on Policing for Northern Ireland (1999). Available at: <https://cain.ulster.ac.uk/issues/police/patten/patteng9.pdf>

<sup>31</sup> Police (Northern Ireland) Act 2000. Available at: <https://www.legislation.gov.uk/ukpga/2000/32/part/VI>, further amendments to the 2000 Act were made in the Police (Northern Ireland) Act 2003. Available at: <http://www.legislation.gov.uk/ukpga/2003/6/contents>

## Operational Independence

The 2000 Act (s.33) places the direction and control of the police under the chief constable, mirroring the legislative arrangements in place in England and Wales and Scotland. The chief constable must have regard to the policing plan and the code of practice on the exercise of functions, issued by the Justice Minister. The 2000 Act also instructs the chief constable to supply the NIPB with such information and documents as the Board may require for the purposes of the exercise of any of its functions (exceptions may include any information that might put an individual at risk or information that cannot be publicly disclosed (s. 76A)).

Whilst the legislation does not define precisely what *direction and control* may involve in practice, the prevailing understanding of the respective boundaries of roles and responsibilities could be gleaned from the Patten Commission recommendations that formed the basis of current arrangements. The Patten Commission recognised the difficulty in defining the duties of a chief constable, but also emphasised the importance of ensuring that the operational decision-making within the police remained free of political interference. The Patten Commission observed that:

*The overwhelming advice is that it is important to allow a chief constable sufficient flexibility to perform his or her functions and exercise his or her responsibilities, but difficult if not impossible to define the full scope of a police officer's duties (6.20).*

In propagating the term operational responsibility, the Patten Commission defined it as:

*the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone (6.21)<sup>32</sup>.*

In light of the observations made by the Patten Commission, the respective roles and responsibilities of the key stakeholders in the tripartite arrangement mean that in practice central government sets out broader policing policy and principles, the NIPB establishes the

strategic objectives and priorities and the chief constable has operational responsibility to deliver against those objectives. This is examined in greater depth below.

### **Governance and Accountability**

The primary forum for governance and accountability of the PSNI is through the NIPB. The Policing Board is composed of 19 elected and independent members, including a chair and vice chair, and it is the primary body responsible for maintaining an *effective, efficient, impartial, representative and accountable* police service<sup>33</sup>. 10 of the 19 members have to be nominated by political parties based on parliamentary representation, the formula for which is outlined in legislation (Schedule 1, section 7, 2000 Act). The rest of the independent members are generally appointed for a fixed-term of not more than 4 years by the Justice Minister. All board member appointments to the NIPB are overseen by the Commissioner for Public Appointments for Northern Ireland.

Following the parliamentary elections in 2017 an Executive could not be formed. In the absence of a Justice Minister, independent members could not be appointed to the NIPB leaving the operations of the Board and police governance arrangements in a state of flux. In October 2018, the Secretary of State had to bring in new

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<sup>32</sup> The Report of the Independent Commission on Policing for Northern Ireland (1999). Available at: <https://cain.ulster.ac.uk/issues/police/patten/pattengg.pdf>

<sup>33</sup> Northern Ireland Policing Board. Available at: <https://www.nipolicingboard.org.uk/board>

legislation to provide a statutory basis for the appointment of members to the Board by the Secretary of State<sup>34</sup>.

Members of the Board are bound by a Code of Conduct<sup>35</sup> and operate under agreed Standing Orders<sup>36</sup>. In addition to the 19 Board Members, the NIPB also has approximately 50 Board staff, comprised of civil servants and directly recruited employees. The role of Policing Board staff is:

- To support the Policing Board in carrying out its role and in fulfilling its statutory functions.
- To advise the Policing Board on the development of strategies and policies and in the decision-making process.
- To implement the strategies, policies and decisions of the Policing Board.
- To represent the Policing Board at meetings of officials involving other bodies or groups; and
- To develop and maintain effective corporate governance arrangements.

There is a separation of duties between Board Members and executive staff. According to the Standing Orders, individual Board Members cannot issue instructions to any employee with regard to any executive function, unless approved by the Board as a whole (para.18). The NIPB has established 4 committees and the Board is able to delegate certain decision-making powers to the committees, so long as it does not include financial decisions or any other decisions that would prejudice the powers and responsibilities of the Board. The four committees<sup>37</sup> are:

- Audit and Risk Management Committee
- Partnership Committee
- Performance Committee
- Resources Committee

All 4 committees advise the Board and have no executive functions. The Committees are empowered to set up sub-groups, however, they are required to publish the terms of reference which includes the membership, remit and details of any delegated powers (if any) for that sub-group. All committees can also procure specialist ad- hoc advice at the

expense of the NIPB, however, the Board has to approve such expenses in the budget. According to the committee terms of reference, all committee meetings are held in private to facilitate *open and frank* discussion. The terms of reference do however make provision for committee meeting agenda and minutes to be made available to all Board Members and political party Researchers. The Board meets publicly every month and performs its governance and accountability function through assessment of monthly performance reporting and the chief constable's Annual Report. The Board sets out its expectation through priorities and objectives in the Annual Policing Plan.

The NIPB has the overall responsibility to approve and allocate funding for the PSNI and the Chief Executive of the Board also serves as Accountable Officer. It is the responsibility of the Board to prepare an annual report of accounts. With regards to the reporting of PSNI expenditure, the duty is delegated to the chief constable (also designated as an Additional Accountable Officer), who has a responsibility to manage resources within the available budget and to deliver the agreed efficiency programme. The Chief Constable's Annual Report includes a statement of accounts from the PSNI Director of Finance and Support Services and HR. A monthly financial

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<sup>34</sup> Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

<sup>35</sup> Northern Ireland Policing Board Code of Conduct (2018). Available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/code-of-conduct-for-board-members.PDF>

<sup>36</sup> Northern Ireland Policing Board Standing Orders (2019). Available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/code-of-conduct-for-board-members.PDF>

<sup>37</sup> Northern Ireland Policing Board Terms of Reference of the Standing Committees. Available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/terms-of-reference-of-the-standing-committees-of-the-board-jan19.PDF>

report from the PSNI is also submitted to the NIPB to monitor progress. The annual accounts are audited externally and the Northern Ireland Controller and Auditor General also provides external oversight over financial spending by all public bodies including the PSNI and NIPB.

With regards to complaints mechanisms, the Police Ombudsman for Northern Ireland provides independent investigation of complaints about the police (constables and certain civilian staff).

HMICFRS also has a statutory duty to inspect and report to the Northern Ireland Department of Justice on the efficiency and effectiveness of the PSNI. The Criminal Justice Inspectorate also has powers to inspect the police and other agencies in Northern Ireland.

### Lessons for Scotland

Despite many similarities between the existing police governance arrangements in Northern Ireland and Scotland, there are lessons that could be learned from the Northern Ireland Policing Board.

Firstly, the NIPB has an established process to monitor and report on its own performance. The NIPB has set out a 3-year Corporate Plan<sup>38</sup> which is supported by an Annual Business Plan<sup>39</sup>. The Corporate Plan outlines an outcome-focused performance framework for the Board to monitor and assess its own performance (see fig. 9 below).



Fig. 9 - Northern Ireland Policing Board, Outcomes set out in the Corporate Plan 2017-2020

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<sup>38</sup>Northern Ireland Policing Board Corporate Plan 2017-2020. Available at:  
<https://www.nipolicingboard.org.uk/sites/nipb/files/publications/corporate-plan-2017-2020.PDF>

<sup>39</sup>Northern Ireland Policing Board Business Plan 2019-2020. Available at:  
<https://www.nipolicingboard.org.uk/sites/nipb/files/publications/business-plan-2019-2020.PDF>

The high-level outcomes set out in the Corporate Plan are supported by specific measures outlined in the Business Plan. The Board reports on its performance against those measures in its own Annual Report <sup>40</sup> providing a clear link between the strategic outcomes and performance reporting (see fig. 10 below).

Outcomes	Measures	Fully achieved	Partially achieved	Not achieved
We have an effective, efficient and continually improving police service and PCSPs	27	15	4	8
We have trust and confidence in policing	12	8	1	3
We have a safe community, where we respect the law and each other	8	8	-	-
<b>Total</b>	<b>47</b>	<b>31</b> (66%)	<b>5</b> (11%)	<b>11</b> (24%)

**Outcome 1:** We have an effective, efficient and continually improving police service and PCSPs had 27 measures overall of which 15 were achieved (56%), 4 were partially achieved (15%), and 8 were not achieved (29%).

**Outcome 2:** We have trust and confidence in policing had 12 measures overall of which 8 were achieved (67%), progress was made on 1 but the measure was not achieved (8%), and 3 were not achieved (25%).

**Outcome 3:** We have a safe community, where we respect the law and each other had 8 measures overall of which all 8 were achieved (100%).

Fig. 10 - A summary of the Board's performance against Outcomes

Secondly, instead of delegating the development of the Annual Police Plan to the chief constable, in Northern Ireland it is the responsibility of the Policing Board to prepare and submit an Annual Police Plan. The strategic objectives for the PSNI as well as performance measures and indicators, and information requirements are clearly outlined in the Annual Plan by the NIPB. For instance, the overarching strategic objectives set out in the Policing Plan for 2019-2020 <sup>41</sup> include *enhancing communication and engagement, protection of people and communities, reduction in offending, more efficient and effective delivery of justice, and more effective and efficient policing*. For each overarching strategic objective, several performance indicators are set out with clear performance criteria and information requirements to enable objective assessment of the PSNI performance by the Board (see fig.11 and 12 below).

COMMUNICATION AND ENGAGEMENT	
Strategic Outcome	Measures
1.1. Trust and confidence in police services	1.1.1 - Increase the level of public confidence in the police ability to provide an unbiased and impartial service and to hold police to account
	1.1.2 - To improve public perception in certain aspects of contact with the PSNI
	1.1.3 - Increase confidence in policing itself where it was identified as being lower through evidence in collaboration with police communities, police agencies and PCOPs
1.2. Build ongoing and meaningful relationships with communities, including commercial and social organisations, wherever possible in force operations	1.2.1 - Increase ongoing meaningful confidence in policing or other contact it was identified as being lower through evidence collected and in collaboration with local communities, partner agencies and PCOPs
	1.2.2 - Support wider opportunities to support of general and community led groups across departments with members of the PSNI
	1.2.3 - Support and demonstrate Policing with the Community offers and outcomes through the delivery of specific: <ul style="list-style-type: none"> <li>• Operational needs based local community action coding through co-design that addresses the needs of communities based in the delivery of policing</li> <li>• Evidence the ongoing impact and benefits realised as a result of the delivery of the contact with citizens programme</li> </ul>

Fig. 11 - Specific performance measures for a strategic outcome, NIPB Annual Policing Plan 2019-2020

STRATEGIC OUTCOME	MEASURE	REPORTING CONTEXTS AND PERFORMANCE INDICATORS – QUANTIFYING FRAMEWORK
1.1	1.1.1	<ul style="list-style-type: none"> <li>• What publicly available evidence is there to demonstrate in the PSNI's ability to provide an unbiased and impartial service?</li> <li>• What publicly available evidence is there to demonstrate the overall level of confidence in the organisation?</li> <li>• Qualitative evidence of evidence that supports the measure</li> <li>• Quantitative indicator - PS Crime Survey Data</li> <li>• Qualitative - What difference has been achieved?</li> </ul>
	1.1.2	<ul style="list-style-type: none"> <li>• What publicly available evidence is there to demonstrate how close we have with other aspects of policing?</li> <li>• What evidence of what measures, costs and impact on delivery exist?</li> <li>• What was the result? - qualitative/quantitative</li> <li>• Qualitative evidence - from stakeholders and in other key contact organisations, like, garda etc.</li> </ul>
	1.1.3	<ul style="list-style-type: none"> <li>• What publicly available evidence is there to demonstrate in ability to demonstrate it was identified as being lower?</li> <li>• What collaborative working has taken place with local communities, PCOPs and partner agencies to increase confidence?</li> <li>• What was the result? - qualitative/quantitative</li> <li>• Qualitative evidence - through ongoing evidence in police areas, community feedback, identified as lower</li> </ul>
	1.1.4	<ul style="list-style-type: none"> <li>• What publicly available evidence is there to demonstrate in ability to demonstrate it was identified as being lower?</li> <li>• What collaborative working has taken place with local communities, PCOPs and partner agencies within the community?</li> <li>• What was the result? - qualitative/quantitative</li> <li>• Qualitative evidence - through ongoing evidence in police areas, community feedback, identified as lower</li> </ul>

Fig. 12 - Performance Monitoring Framework and information requirements, NIPB Annual Policing Plan 2019-2020

<sup>40</sup> Northern Ireland Policing Board Annual Report and Accounts (2017-2018). Available at: <https://www.nipoliceboard.org.uk/sites/nipb/files/Annual-Report-and-Accounts-1-April-2017.pdf>

<sup>41</sup> Northern Ireland Policing Board Annual Policing Plan 2019-2020. Available at: <https://www.nipoliceboard.org.uk/sites/nipb/files/publications/annual-policing-plan%202019-20.pdf>

The Chief Constable's Annual Report includes reporting against specific overarching outcomes and performance indicators, as outlined in the Boards Annual Policing Plan. This is followed by a further report from the NIPB providing a 'Board Assessment' of police performance against all measures for each strategic outcome in the Annual Policing Plan (fig. 13 below)<sup>42</sup>.

Strategic Outcome 1.1: Trust and confidence in Policing throughout Northern Ireland

Measure 1.1.1: Increase the level of public confidence in the police's ability to provide an ordinary day-to-day service and in local police

PSNI PERFORMANCE:

According to the outcome of the Policing Board's module of the Northern Ireland Omnibus Survey on Public Perceptions of the Police, PCSPs and the Northern Ireland Policing Board published in September 2017, 90% of respondents indicated that they had some, a lot, or total confidence in the police's ability to provide a day-to-day policing service for everyone in Northern Ireland, a marginal increase from the April 2016 finding of 88%. The percentage of respondents overall who had total confidence saw a statistically significant increase from 12% in April 2016 to 16% in April 2017.

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BOARD ASSESSMENT:

How PSNI communicate and engage with the community is one key way in which PSNI can build the community's confidence in their ability to keep people safe and increase the perception that they act in an open and impartial manner.

In considering PSNI performance across the six measures under Strategic Outcome 1.1, Members noted the range of activities and training that PSNI are undertaking in order to improve confidence in all communities. As outlined above against Measure 1.1.1, while the increase of 2 percentage points between April 2016 (88%) to April 2017 (90%) in confidence in the police's ability to provide an ordinary day-to-day service and in local police is not statistically significant, it does continue the general trend of high levels of confidence in PSNI. Given the relative stability of that trend, it is perhaps arguable that across the community as a whole, confidence in local police and the police's ability to provide an ordinary day-to-day service has plateaued. It is therefore important for PSNI to intensify its efforts in harder to reach communities where confidence in police is historically lower for a range of complex reasons. PSNI's efforts to increase confidence in a number of identified DEAs where it is historically lower, as well as a particular focus on young people, is considered by measures 1.1.3 and 1.1.4.

However there are a number of other findings from the Omnibus survey which will require careful consideration by PSNI, and the Board will discuss the results in more detail in order to ascertain relevant causation factors. Over two thirds (68%) of respondents indicated that they thought that the police were doing a very/fairly good job in their area, a statistically significant decrease on the April 2017 finding of 74%. The proportion of Catholic respondents who thought that to the PSNI was doing a very good/fairly good job in their area has fallen from 73% to 65% and the proportion of Protestant respondents who thought this has also fallen from 76% to 71%. Almost three quarters (74%) of respondents were very satisfied or fairly satisfied that the PSNI treat members of the public fairly, a statistically significant decrease of 4% points since April 2017 (78%), but roughly in line with the 2016 survey results (73%).

Fig. 13 - An example of NIPB Board Assessment of PSNI performance against a strategic outcome

Based on the example from the Northern Ireland Policing Board, a similar approach could be adopted by the Scottish Police Authority in order to streamline performance management. This might require the SPA to prepare a strategic objective plan (similar to the Strategic Police Plan in Scotland) outlining clear, measurable outcomes and indicators, and clearly setting out information requirements that will support an objective and transparent assessment of police performance against each performance measure.

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<sup>42</sup> Northern Ireland Policing Board Assessment of the PSNI Performance Against the Policing Plan 2017-2018. Available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/board-assessment-psni-performance-policing-plan-201718.PDF>

## Republic of Ireland

In the Republic of Ireland (RoI), police governance arrangements broadly mirror those in Scotland and Northern Ireland but there are some distinct regional variations. The Minister of Justice and Equality has overall responsibility for policing and has a statutory duty to hold the Garda Commissioner to account. Following reform in 2015, some of the Ministry's powers of police oversight were delegated to a newly established Policing Authority which is responsible for monitoring the performance of the Garda Síochána in relation to the provision of policing in Ireland. It is to be noted that further reform in police governance arrangements is expected to take place. An independent *Commission on the Future of Policing in Ireland* submitted its report in September 2018 and work is underway to make legislative changes to the structures of policing and police governance through a *Policing and Community Safety Bill*. The recommendations made by the Commission are outlined in the section on Governance and Accountability.

### Legislative Provision

The Policing Authority was established by the Policing Authority and Miscellaneous Provisions Act 2015 and came into effect on 01<sup>st</sup> January 2016. The main statutory functions (s. 62H)<sup>43</sup> of the Policing Authority are *to oversee the performance of the Garda (by setting priorities and performance targets (s.18)), to nominate persons suitable for appointment of Garda Commissioner and deputy commissioner, to appoint assistant commissioner(s), to approve a strategy statement and an annual policing plan, and to provide information and advice to the Minister.*

The powers and functions of the Garda Commissioner are enshrined in the Garda Síochána Act 2005<sup>44</sup>. According to the 2005 Act (s26.), the key functions of the Garda Commissioner include the direction and control of the Garda, to manage day to day business of the organisation including responsibility for employing officers and civilian staff, and to advise the Minister on policing and security matters. The 2005 Act also instructs the Garda Commissioner to have regard to *the priorities and performance targets and relevant policing of the Government and any direction issued by the Government.*

## Operational Independence

Both the 2005 Act and the 2015 Act maintain the provisions for the Minister to be able to give written directions to the Garda Commissioner (2005 Act) and the Policing Authority (2015 Act).

The 2005 Act sets out that

*s.25.— (1) Following the approval of the Government, the Minister may issue to the Garda Commissioner written directives concerning any matter relating to the Garda Síochána.*

However, the Act does make it clear that any Ministerial directive should not impede the independence of any officer of the Garda particularly in relation to the investigation or prosecution of a specific offence (s.25(4)).

The 2015 Act adds the provisions for the Policing Authority to make recommendations to the Minister with regards to any directives, making it clear that the Authority does not have powers to give directives to the Commissioner. Further, the 2015 Act also permits the Minister, following approval from the Government, to give written directions to the Policing Authority with regards to any function of the Authority and instructs the Commissioner and the Policing Authority to *comply* with any Ministerial directive under legislation (s.23, 2015

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<sup>43</sup> Policing Authority and Miscellaneous Provisions Act 2015. Available at: <https://data.oireachtas.ie/ie/oireachtas/act/2015/49/eng/enacted/a4915.pdf>

<sup>44</sup> Garda Síochána Act 2005. Available at: <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/print.html>

Act). All written instructions by the Minister also have to be presented to the Parliament in the interests of transparency and democratic oversight.

The legislation provides a narrow interpretation of the operational independence doctrine, limited to the functions of the Garda in relation to the investigation and prosecution of offences. In all other matters, there is considerable scope for the Government to influence and steer policing policy through the Garda Commissioner and the Policing Authority. This arrangement provides very little scope for operational independence particularly in relation to the management and administration of the police organisation.

### **Governance and Accountability**

The Policing Authority has delegated powers (previously held by the Minister) to set priorities and performance targets for the Garda. The Authority meets at least once a month with the Commissioner alternating between a public and a private meeting. The Authority has also established a number of committees to oversee the governance and progress the work of the Authority in relation to its statutory priorities. The 4 committees are:

- Audit and Risk Committee
- Policing Strategy and Performance Committee
- Garda Organisation Development Committee
- Garda Appointments Quality Assurance and Selection Governance Committee

All committee meetings are held in private but can co-opt external members with specialist skills, knowledge and experience or procure ad-hoc advice at the expense of the Authority. Police performance is assessed against the policing priorities set out in the Annual Policing Plan and the Policing Strategy and Performance Committee carries out oversight work on behalf of the Authority. The Garda have an internal process of ensuring that the service meets its performance targets against the Annual Policing Plan. Assistant Commissioners or Executive Directors are assigned each Policing Plan initiative and progress is reported to the Commissioner and the Policing Authority on a monthly basis. The Policing Authority is required by legislation to appoint a Chief Executive Officer, following approval by the

Minister. The Chief Executive Officer is the Accounting Officer in relation to the accounts of the Authority. The duties of the Chief Executive Officer include day to day administration and management of the Authority and implementation of the policies and decisions of the Authority (s.62P).

The Authority does not have any role in dealing with individual complaints. The Garda Ombudsman deals with complaints from members of the public concerning the conduct of members of the Garda Síochána. The Garda Síochána Inspectorate carries out inspections or enquiries on particular aspects of the operation and administration of the Garda Síochána.

With regards to the effectiveness of the police and police governance arrangements, an independent Commission on the Future of Policing in Ireland published its findings in September 2018<sup>45</sup> and made wide-ranging recommendations. Some of the recommendations include:

- Codification of police powers of arrest, search and detention
- Improved partnership working and information sharing
- Improved Parliamentary oversight of policing through the attendance of the Commissioner at relevant committees

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<sup>45</sup> Commission on the Future of Policing in Ireland (September, 2018). Available at: [http://www.policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](http://www.policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf)

- Explicit mention of the operational independence of the Garda Commissioner in legislation
- Empowering the Garda Commissioner to appoint senior officers
- An overhaul of the police complaints mechanism with an establishment of an Independent Office of the Police Ombudsman
- The establishment of a statutory board comprised of non-executive board members to assist the Commissioner in running the police organisation
- A new district policing model to enhance the provision of local policing
- Delegated authority to local senior officers, with strategy, policy and corporate decision-making powers held centrally
- Abolishing the Garda Síochána Inspectorate and the Policing Authority (both are instruments of the Government) and replacing them with an independent Policing and Community Safety Oversight Commission

The Minister for Justice and Equality endorsed the report of the Commission and agreed to accept all 157 key recommendations (136 in full and 21 in principle). The Minister also published a four-year high-level plan *Policing Service for the Future*<sup>46</sup> which sets out the approach to implementation which will be overseen by a dedicated Programme Office in the Department of the Taoiseach as recommended in the Commission's report.

### **Lessons for Scotland**

Overall, the experience in Ireland suggests that the Policing Authority does not provide adequate distance between the police and central government. The Policing Authority, the Ombudsman, the Garda Inspectorate and to a large extent the Garda Commissioner do not have sufficient independence from the Minister and the respective roles and responsibilities often overlap. Further, the Independent Commission has highlighted that the Garda Commissioner does not have independence over organisational decision-making, particularly with regards to the appointments of senior officers. The experience in Ireland also shows that local policing priorities and initiatives have largely been neglected by a centralised governance structure and there is no formal mechanism for local influence in policing policy. Despite these issues, the current reform initiatives, so soon after the establishment of the Policing Authority in 2015, also serve to show that the government has showed a willingness to bring about necessary structural and legislative changes to the

current police governance and accountability structures and that might be the most important lesson for policy makers in Scotland.

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<sup>46</sup> A Policing Service for the Future (2018). Available at:  
[http://justice.ie/en/JELR/A\\_Policing\\_Service\\_for\\_the\\_Future.pdf/Files/A\\_Policing\\_Service\\_for\\_the\\_Future.pdf](http://justice.ie/en/JELR/A_Policing_Service_for_the_Future.pdf/Files/A_Policing_Service_for_the_Future.pdf)

## APPENDIX

### Governance arrangements of national services

This summary report provides an overview of governance and accountability arrangements of three public service bodies: the Scottish Fire and Rescue Service (SFRS), the British Transport Police (BTP) and the National Crime Agency (NCA). The report considers the current structures, roles and responsibilities of key stakeholders and highlights various mechanisms of accountability, including performance management.

#### Scottish Fire and Rescue Service

The Scottish Fire and Rescue Service (SFRS) is governed collectively by the SFRS Board. The Board provides strategic direction, support and guidance to the SFRS ensuring that it operates effectively and that the Government's priorities are implemented. Scottish Ministers appoint the Chair and members of the Board and have a statutory duty to prepare a Fire and Rescue Framework for Scotland setting priorities and objectives and providing guidance to the SFRS on the execution of its functions. The scrutiny and oversight role of the Board includes management of risk, finance and performance and it is the Board's duty to hold the Chief Officer and the Senior Leadership Team (SLT) to account. The Chief Officer leads the SLT and is also the Accountable Officer.

The Board is able to establish its own committee structure and delegate responsibilities to such committees as it considers fit. The current committees and their respective roles and responsibilities are listed below:

- The Integrated Governance Committee <sup>47</sup> – provides assurance to the Board in relation to all issues identified in other committees.
- The Audit and Risk Assurance Committee<sup>48</sup> – provides assurances with relation to risk management, and the internal control environment. The committee draws on internal audit reports to perform its scrutiny functions and works closely with external auditors to provide assurances to the Scottish Government and the Scottish Parliament.

- The Service Delivery Committee<sup>49</sup> – primarily responsible for performance management and to provide assurances with regards to service delivery against agreed outcomes, operational efficiency and effectiveness.
- The Transformation and Major Projects Committee<sup>50</sup> – provides strategic oversight of the transformation programme and ensures major projects are delivered within agreed costs and timelines.
- The Staff Governance Committee<sup>51</sup> – provides strategic advice and direction on all HR related issues including remuneration. In order to assist the committee’s workload a sub-committee has been established to give advice on the remuneration and appointments strategy.

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<sup>47</sup> SFRS Integrated Governance Committee Terms of Reference. Available at:  
<https://www.firescotland.gov.uk/media/1132599/torigctteev3.o.pdf>

<sup>48</sup> SFRS Audit and Risk Assurance Committee Terms of Reference. Available at:  
<https://www.firescotland.gov.uk/media/1067464/toraractteev4.o.pdf>

<sup>49</sup> SFRS Service Delivery Committee Terms of Reference. Available at:  
<https://www.firescotland.gov.uk/media/1067392/torsdctteev3.o.pdf>

<sup>50</sup> SFRS Transformation and Major Projects Committee Terms of Reference. Available at:  
<https://www.firescotland.gov.uk/media/1067320/tortmpctteev2.o.pdf>

<sup>51</sup> SFRS Staff Governance Committee Terms of Reference. Available at:  
<https://www.firescotland.gov.uk/media/1067356/torsgctteev5.o.pdf>

The SFRS has an established performance management framework<sup>52</sup> which clearly articulates the respective roles and responsibilities of the Scottish Ministers, the SFRS Board and the SFRS SLT. The Scottish Ministers are responsible for setting objectives and priorities, approving the strategic plan and agreeing the budget and associated grant aids. The SFRS Board has a duty to publish a strategic plan, monitor and scrutinise performance against the priorities and strategic objectives, and to prepare and submit an Annual Report and Accounts to the Scottish Parliament. The SLT led by the Chief Officer is responsible for operational delivery of services. The SLT also plays a role in preparing the strategic plan and the Annual Report in collaboration with the Board.

The priorities and key performance indicators set out in the SFRS Performance Management Framework are linked to the Scottish Government Strategic Outcomes and Justice Vision priorities. The Board publishes an Annual Review of performance providing an overview of progress and activity against the Strategic Plan (2016- 2019)<sup>53</sup> and a Red, Amber, Green (RAG) assessment against key performance indicators (see fig.1 below).

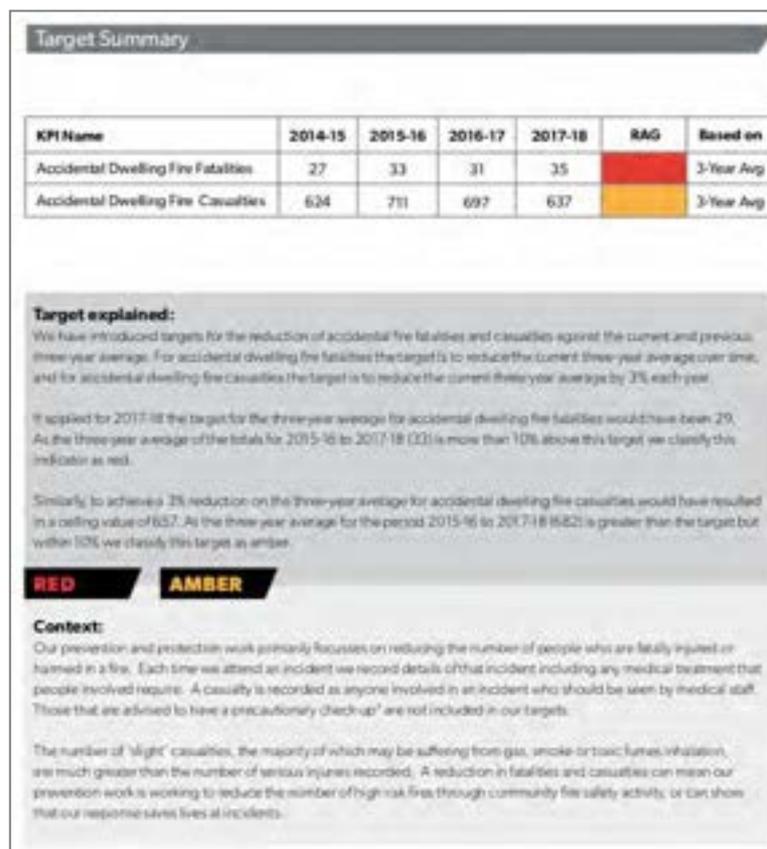


Fig. 14 - An example of SFRS performance assessment against a KPI

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<sup>52</sup> SFRS Performance Management Framework 2018. Available at:

[https://www.firescotland.gov.uk/media/1322171/Perf\\_Mgt\\_Framework\\_2018\\_v1.o.pdf](https://www.firescotland.gov.uk/media/1322171/Perf_Mgt_Framework_2018_v1.o.pdf)

<sup>53</sup> SFRS Strategic Plan 2016 – 2019. Available at:

[https://www.firescotland.gov.uk/media/1005163/scottish\\_fire\\_and\\_rescue\\_service\\_strategic\\_plan\\_2016\\_19.pdf](https://www.firescotland.gov.uk/media/1005163/scottish_fire_and_rescue_service_strategic_plan_2016_19.pdf)

## British Transport Police

The British Transport Police is governed by the British Transport Police Authority (BTPA). The BTPA is an independent body comprised of up to 15 Board members, including a chair, reflecting a range of experience, skills and expertise. Members of the Authority are appointed by the Secretary of State for Transport. The main responsibilities of the BTPA include overseeing the work of the BTP, appointment of the chief constable, deputy chief constable and assistant chief constables, and setting the strategic direction, objectives and budget for the BTP. The Board structure currently includes the following committees:

- Audit and Risk Assurance Committee<sup>54</sup> – responsible for preparing annual accounts, approving internal and external audit strategy, risk management and oversight of internal control environment.
- Appointments and Remuneration Committee <sup>55</sup> – has delegated responsibility to approve the remuneration packages and performance related pay for executive appointments at the Authority and the BTP.
- Strategy and Planning Committee<sup>56</sup> – responsible for overseeing the preparation of the policing plans, setting and agreeing performance metrics with the BTP, and preparation of the annual report. The committee also has certain delegated powers to approve business plans.
- Performance and Delivery Committee<sup>57</sup> – assesses financial reports and the BTP's performance against annual and medium-term financial plans, oversees the delivery of capital projects, scrutinises operational performance and tactics including the use of stop and search/tasers etc. The committee also has a role in overseeing HR related issues in line with the people strategy.

The Authority has also established a Policing Plan Working Group that determines the national targets and local targets for each BTP area. These targets are subsequently published in annual policing plans.

The Authority has an Executive Team of twelve, covering strategy, governance, compliance and finance. The Authority's Chief Finance Officer fulfils the role of Treasurer to the Authority and acts as the Accountable Officer, with the overall responsibility for the proper management of the BTP Fund. The Chief Finance Officer also provides financial advice to the BTPA with relation to strategic planning and policy. In addition, with the agreement of the Department for Transport the Chief Constable is appointed as an Additional Accounting Officer.

The Chief Constable's responsibilities as Additional Accounting Officer include the management and expenditure of the BTP, and joint responsibility for the preparation of annual accounts. This arrangement reflects the autonomy the Authority grants to the Chief Constable in the spending of the budget given to it by the Authority, and the BTP's operational independence in policing matters. However, it remains the role of the Authority to exercise appropriate oversight of the overall expenditure, and the appointment does not detract from the BTPA's Chief Finance Officer's responsibility as Accountable Officer.

The Chair of the BTPA and the Executive team have access to the Department for Transport and the ministerial team when required to discuss policing strategy. The Chief Constable has similar access to discuss operational policing which suggests a direct relationship between the BTP and the government.

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<sup>54</sup> BTPA Audit and Risk Committee. Available at: <https://btpa.police.uk/committees/audit/>

<sup>55</sup> BTPA Appointment and Remuneration Committee. Available at: <https://btpa.police.uk/committees/appointments-and-remuneration/>

<sup>56</sup> BTPA Strategy and Planning Committee. Available at: <https://btpa.police.uk/committees/strategy/>

<sup>57</sup> BTPA Performance and Delivery Committee. Available at: <https://btpa.police.uk/committees/performance-and-delivery/>

With regards to performance management, the BTPA's Strategic Plan (2018-2021) <sup>58</sup> sets out the key strategic priorities which include *protecting people, reducing delays and disruption, providing value for money, and building a skilled and specialist workforce*. For each strategic priority, the Plan concisely sets out key areas of focus, key outcomes and how the BTPA will measure progress (see fig. 2 for an example). The BTPA Strategic Plan also includes a Medium-Term financial plan, an outline of resource allocation, a delivery plan with yearly timescales and a profile of risk. The Annual Review for 2018-2019 (unpublished at time of writing) will include an assessment of the BTPs performance against these objectives.



Fig. 15 - Key outcomes and indicators for BTPA's Strategic Priority of Protecting People

<sup>58</sup>BTPA Strategic Plan (2018-2021). Available at: <https://btpa.police.uk/livesite/wp-content/uploads/2018/07/BTPA-Strategic-Plan-201821-1.pdf>

## National Crime Agency

The National Crime Agency (NCA) is an operationally independent non-ministerial department with several external and internal streams of governance and accountability across the UK. Externally, the NCA is held to account by the Home Secretary for its performance and it is subject to scrutiny by the Parliamentary Home Affairs Select Committee. The NCA can also be scrutinised by the Scottish Parliament and the Northern Ireland Assembly. In England and Wales, further independent scrutiny and oversight of the NCA is provided by the following bodies:

- HMICFRS to ensure *efficiency and effectiveness*
- The Independent Office for Police Conduct (*formally the IPCC*) to deal with public complaints and misuse of powers
- The Office of Surveillance Commissioners provides oversight of the use of covert surveillance and covert human intelligence sources
- The Interception of Communications Commissioner provides oversight of the use of interception powers and the acquisition of communications data
- Investigatory Powers Tribunal investigates complaints from the public about the use of intrusive powers

In Scotland and Northern Ireland, the PIRC and the Police Ombudsman may deal with complaints about the NCA with regards to the misuse of powers in their respective regions.

Internally, the NCA is governed by a Board made up of executive and non-executive members, the Board is chaired by the NCA Director General. The Board is supported by a number of sub-committees, including an Audit Risk and Assurance Committee<sup>59</sup> chaired by a Non-Executive Director (see fig.3 below for the NCA governance and committee structure). An Independent Reference Group<sup>60</sup> is also in place to advise the Board on issues that may present ethical, moral or reputational concerns. Whilst the Reference Group has no decision-making powers and cannot interfere in operational matters, it can oversee and advise the Board with regards to NCA policies and code of conduct and highlight issues of public concern.

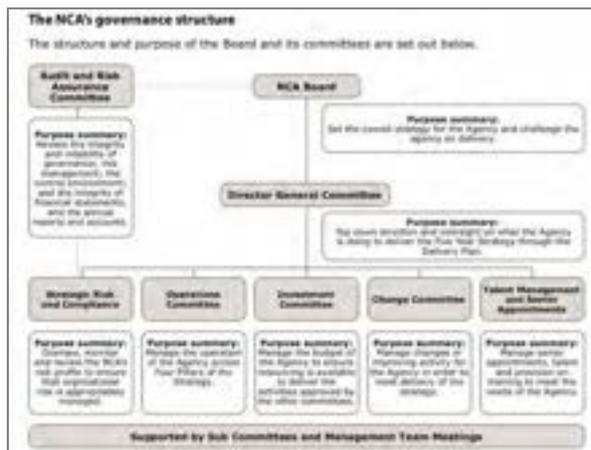


Fig. 16 – The NCA's internal governance and committee structure<sup>61</sup>

<sup>59</sup> NCA Audit Risk and Assurance Committee ToR. Available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/108-nca-audit-risk-assurance-committee-terms-of-reference/file>

<sup>60</sup> NCA Independent Reference Group ToR. Available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/30-nca-reference-group-terms-of-reference/file>

<sup>61</sup> NCA Annual Report and Accounts 2017-2018. Available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/177-nca-annual-report-accounts-2017-18/file>

The NCA Framework<sup>62</sup> published by the Home Office outlines the respective roles and responsibilities of the Home Secretary and the Director General. The strategic priorities for the NCA are determined by the Home Secretary, in consultation with the NCA and other strategic partners. The NCA Director General is appointed by the Home Secretary and is held to account for the performance of the Agency. The *direction and control* of the NCA, is placed under the Director General, emphasising the operational independence of the Agency. The Director General determines the 'operational priorities' and publishes the Annual Plan for the NCA but the operational priorities must reflect the Home Secretary's strategic priorities. The Director General is also responsible for preparing an Annual Report including performance information and accounts and acts as the Accountable Officer for the NCA. As such, the NCA has the ability to determine its own approach on corporate and financial matters without recourse to the Home Office or other departments.

The performance reporting within the NCA's Annual Report<sup>63</sup> outlines operational activity for the previous year and includes statistics on seizures and arrests, however, the linkages between performance reporting and operational and strategic priorities are unclear. Most notably, there is no detailed assessment of the NCA's performance on behalf of the Home Secretary and there is a lack of a clear performance framework with key performance indicators.

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<sup>62</sup>NCA Framework 2015. Available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/29-nca-framework-document/file>

<sup>63</sup>NCA Annual Report and Accounts 2017-2018. Available at: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/25-nca-annual-report-2016-17/file>