



WMCA Board

Date	20 July 2018
Report title	Process and Indicative Timetable for incorporation of West Midlands Police and Crime Commissioner Functions into the Mayoralty
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Report has been considered by	Programme Board - 6 July 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Agree to the development of a Governance Review and Scheme to enable the proposed amalgamation of the functions of West Midlands Police and Crime Commissioner (PCC) into the Mayoralty.
- (2) Endorse the proposed plan and timetable to achieve a transparent and robust route to enable the transfer of PCC powers from one single elected official to another.
- (3) Agree to receive a further report on the Governance Review and Scheme at the WMCA Board on 14 September 2018.

1.0 Purpose

- 1.1** The second Devolution Deal for the West Midlands outlined the proposed transfer of the Police and Crime Commissioner role to the Mayor. This report outlines the proposed route to achieve this transfer whilst enabling matters to receive full consideration by the Board as agreed previously, and subject to the consultation processes outlined in this report.
- 1.2** Endorse the basic principle of this process, which is to maintain the role and functions of the PCC within the Mayoral Model, and effect a process which is in line with the Second WMCA Devolution Deal and subsequent amendment tabled on 9th February 2018 (which is outlined below).

2.0 Background

- 2.1** The Policing and Crime Act 2017 places a statutory duty on emergency services to collaborate in the interests of the economy, efficiency, effectiveness and public safety. The West Midlands has been developing a vision for moving fire and police governance to one single accountable elected official through the second devolution deal.
- 2.2** The second Devolution Deal confirmed that in addition to continuing the integration of the West Midlands Fire and Rescue Service within the Combined Authority ‘the government, the CA and the PCC will work together to agree a detailed governance model and a legislative timetable for incorporating the role and power of the Police and Crime Commissioner into the mayoralty, with a view to electing the first Mayor with these powers in 2020’.

When considering the Devolution Agreement on 9 February 2018 the WMCA board agreed that ‘The Government, West Midlands Combined Authority and the West Midlands Police & Crime Commissioner will enter into discussions with the Mayor regarding a governance model for incorporating the role and powers of the Police & Crime Commissioner into the Mayor’s role and powers, provided that the final governance model proposed following discussions is agreed by each of the Constituent Authorities, the Mayor and the Police & Crime Commissioner. Work is now beginning to plan for this detailed and complex task, which will include the establishment of regular dialogue and joint working with the Police & Crime Commissioner in order to secure continuity in good practice and public protection. Provided there is agreement by each of the Constituent Authorities, the Mayor and the Police & Crime Commissioner, [they] will submit a report on the decisions to be taken and the proposed process for these governance changes to a future meeting of the WMCA Board, informed by guidance from the Home Office and the Ministry of Housing, Communities & Local Government.’

- 2.3** The necessary legislation to enable this can be found in the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Devolution Act 2016, Section 4 Functions – 107F Functions of Mayors – Policing.
- 2.4** The existing model for police governance by a combined authority Mayor is consistent with the PCC model; a single, locally elected representative responsible for ensuring local services are accountable to the people they serve. As a matter of law, the Policing Protocol will apply to a Mayor acting as PCC as it applies to a PCC. Apart from the changes in governance outlined in this report, almost every other aspect of existing primary legislation relating to the role and functions of the PCC will remain unchanged. The Police and Crime Panel retains its role and functions.

2.5 The Combined Authority is fully committed to developing these proposals in an open and transparent manner and to co-produce outcomes with the Office of the PCC, West Midlands Police and other delivery partners, in line with a shared commitment to a model of devolution that works for – and is shaped by – the region. This process has now started and the PCC’s officers are engaged in discussions with the Combined Authority team. It is now the right time to confirm the process with the WMCA Board.

Process

2.6 The process for transferring these functions to an elected Mayor of a Combined Authority area is set out below. In the paragraphs below we outline this legislative basis (sections **2.7-2.10**) and our recommended route.

2.7 Within the original Act for Combined Authorities ‘Local Democracy, Economic Development and Construction Act 2009’, the process for developing proposals for functions to be undertaken required a Governance Review to be undertaken with a view to publishing a Scheme that would be “likely to improve the statutory exercise of functions and lead to improved efficiency and effectiveness”. Consultation is then undertaken in respect of the Scheme at which point the constituent authorities and the WMCA Board are required to agree to forward the results of the Scheme and the Governance Review to the Secretary of State (SofS) for their consideration and preparation of the appropriate Order, subject to the consent of the constituent authorities¹.

2.8 The Cities and Local Government Devolution Act 2016 made provisions which amend the Local Democracy, Economic Development and Construction Act 2009 to enable the SofS to ‘provide for the Mayor for the area of a Combined Authority to exercise the functions of a Police and Crime Commissioner in relation to that area’. Such an order may only be made by the Home Secretary with the consent of the constituent authorities, the Combined Authority, and the Mayor of the authority. Such a process does not require a Governance Review or Scheme to be prepared, nor does it require there to be a public consultation. It is expected that the Home Office would work closely with the Mayor and the constituent leaders in developing the secondary legislation, and would expect the OPCC to be engaged in this process. This was the process undertaken by the Greater Manchester CA in respect of their Mayoral PCC Order in 2016.

2.9 The 2009 Act as amended by the 2016 Act requires the consent of the parties mentioned above to make an order to transfer PCC functions to the Mayor. The policy intention is that a PCC and their Office will be engaged in any such proposal and involved in any process for the transfer of PCC functions. , We want to demonstrate best practice through engaging with the PCC, and co-producing the process with his office and undertaking a full and meaningful public consultation process which we believe is consistent with the fire service consultation detailed further in sections **2.11** and **2.12** below.

2.10 Whilst we are not required to do so by the legislation, we believe the spirit of the 9 February amendment to the devolution deal is best delivered by developing a governance review and scheme and undertaking a comprehensive public consultation. We will work with the Home Office during this process as set out in 2.8 above. The process outlined in 2.8 and 2.9 above will involve the constituent authorities and also draws on the expertise of the OPCC in developing the best model for the West Midlands.

¹ Following the 2016 Act this is the process which is followed in respect of changes to governance rather than the devolution of additional functions to be undertaken by the CA which no longer require a full governance review and scheme.

- 2.11** If the WMCA Board agrees then the next step is to determine the type and nature of consultation. There was recently a two phase process related to the Fire Service Governance. There are important distinctions to make between the starting points for these two processes, as the first process with Fire was to establish the public views on moving from a Fire Authority model to a single point of accountability model. The second process was to then determine which single point of accountability the public preferred and the model of governance. Governance for Policing moved nationally from the Police Authorities to regional single elected officials through the creation of Police and Crime Commissioners in the Police and Social Responsibility Act 2011, with PCCs being elected in 2012. Parliament's intention in passing the 2016 act was that a Mayor should be able to exercise PCC Functions where there is a local deal agreeing to the transfer of the functions (and subject to the relevant statutory process). The second Devolution Deal commits to moving that single point of accountability from one elected official to another (PCC to Mayor who is also the PCC). There is no legislative scope to revert to the previous Police Authority model, or indeed any other model which is not consistent with a single elected official acting as the PCC.
- 2.12** The West Midlands already has a single elected official responsible for Policing and Crime (the West Midlands PCC). We therefore propose a single, robust eight-week consultation that would do two things: Firstly it would ask the question if the public wished, as proposed in the second devolution deal, to transfer the PCC role into the Mayoralty from 2020 or maintain two single elected and differential roles. Secondly, it would then seek the public's views on the governance review and scheme. This will be similar to the Fire Service consultation.
- 2.13** The indicative timetable in **2.15** shows how the recommended route outlined in this section of the report could be delivered, together with a full public consultation as set out above. The indicative timetable **2.15** is still challenging, due to a number of factors including the pressure on Home Office and Parliamentary time resulting from Brexit negotiations and the need to reach a final position in due time to make the necessary arrangements before the next Mayoral Elections in 2020. The order must be laid in Parliament before 7 November 2019 to comply with Electoral Commission guidelines to table 6 months prior to the elections. The WMCA has significantly pushed the Home Office's preferred timetable to ensure our timeline allows for a full 8 week public consultation process as well as the opportunity for constituent member authorities to fully consider the proposals. There is no further flexibility in the timetable.

Governance Review Project Team

- 2.14** Subject to agreement of the preferred route, a project team will be brought together to undertake the Governance Review and subject to the outcome develop the appropriate Scheme. We propose that this includes representatives from the Office of the PCC, the WMCA, appropriate nominations from constituent authorities and from WMP. The results of this work will be brought back for approval and will inform the process going forward. The OPCC has offered to chair this group.

2.15 Indicative Timetable

Based on the outline in 2.9 the anticipated timetable would be:

Action	Who	Date
Programme Board		6 July 2018
Approval to prepare Governance Review and Scheme	CA Board	20 July 2018
Governance Review and Scheme completed	CA and PCC Office	Completed by end of August 2018
CA Board consider the Governance Review and Scheme	CA Board	14 September 2018
Constituent Authorities consider Governance Review and Scheme and feedback comments to CA Board	Constituent Authorities and PCC Office	Sept/Oct
Seek Approval to Consult	CA Board	9 Nov 2018
Public Consultation	CA, Constituents and PCC Office	19 Nov 2018 - 14 Jan 2019
Consideration of Consultation Outcomes and final approval by Constituent Authorities/PCC	Constituent Authorities/PCC	Jan/ Feb 2019
CA Board approval to submit	CA Board	8 March
Scheme to Home Secretary	CA	Mid-March 2019
Home Secretary Approval	Home Office	April 2019
Preparation of Order	Home Office	April - July 2019
Agreement to Order	CA and Constituent Authorities	August 2019
Lay in Parliament*	Home Office	By 7 Nov 2019
Confirmation of Order	Home Office	December 2019
Election of Mayor with PCC Powers		May 2020

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

3.0 Opportunities

3.1 The transfer presents an opportunity to join up the leadership of local public services and unlock a range of opportunities for deeper and more meaningful collaboration. The Mayor, the West Midlands Combined Authority and the Police and Crime Commissioner have a number of shared policy areas where positive progress is already being made, examples include Thrive, Mental Health and Justice, and criminal justice reform. The opportunities presented through the amalgamation of functions broadens these opportunities further to include gains in joining up public services and systems further focusing on key areas of prevention, early intervention and crisis management – including within several policy areas identified within both the WMCA strategic objectives and the PCC’s Police and Crime Plan. Some of these potential benefits can be explored through consultation.

3.2 There are several areas where the transfer of responsibilities to the Mayor could open up opportunities. For example;

1. A single, elected, point of accountability for both Fire and Police, as well as the wider WMCA portfolio. Whilst the PCC plan will remain a separate legal document with ownership from the Mayor, there is the opportunity to undertake this as part of a suite of policies and strategies across the region with input and influence from a range of stakeholders.
2. Opportunities to join up the 'and crime' aspect of the PCC functions. These are often interpreted as the wider factors which impact on offending and re-offending, reducing social harms and promoting positive, healthy, happy and more prosperous communities. There are particular opportunities in regards to partnerships with key stakeholders including but not limited to Local Authorities, health, housing, probation, employers and the business community. Within the current PCC plan 2016-20 there are 7 key priorities, most of which have a partnership element with local authorities, health, the WMCA or other local stakeholders.
3. The potential drive down demand on policing through ensuring effective collaboration and partnerships in early intervention and prevention, including through improved data sharing and cross-agency working. This should focus on linking policing strategy to the wider suite of local public services, local authority responsibilities and WMCA priorities. It should also consider the impact on policing within the housing strategy, the skills and productivity deal and wider WMCA activity.

4.0 Financial implications

- 4.1 The financial implication of a public consultation will be determined by the nature and type of consultation.
- 4.2 As with the transfer of Fire Service governance, if these proposals passed there will be financial implications which will need to be funded. These will need to be assessed as plans for consultation develop.
- 4.3 Wider costs of transition will need to be developed as part of any subsequent transition plan and funding identified through internal resources of the WMCA and PCC and with the practical assistance of the Home Office.

5.0 Legal implications

- 5.1 The legal implications in terms of legislation are outlined within this report. Further legal implications will be reported when the Governance Review and Scheme are brought back for consideration. If these proposals go forward there are a number of legal issues that will require detailed consideration in terms of the transfer of governance which will in some respects be similar to those already considered in the transfer of the West Midlands Fire and Rescue Service and the transfer of members of staff under TUPE, assets and liabilities.
- 5.2 In terms of public consultation to be undertaken later in the process outlined above (and according to the WMCA Board decision), the Combined Authority will need to be mindful of the principles of good consultation namely that the consultation will be timely and clear on the remit of the exercise, it will be for a proportionate length of time and the Authority will have due regard to the outcomes in arriving at any subsequent decisions which are informed by the exercise.

6.0 Equalities implications

6.1 There are no specific equalities implications arising from this report, however any consultation process will need to take into account equalities implications and the need to reach the widest possible number of people from different communities and backgrounds in its design.

7.0 Other implications

None

8.0 Schedule of background papers

WEST MIDLANDS COMBINED AUTHORITY - A SECOND DEVOLUTION DEAL TO PROMOTE GROWTH <http://caslfmrcprd01.centronet.centro.org.uk/resourcecentral>