



West Midlands
Combined Authority

WMCA Board

Date	9 November 2018
Report title	Consultation for the Transfer of West Midlands Police & Crime Commissioner Functions
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Report has been considered by	Programme Board - 26 October 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

1. Note the comments received from the Constituent Councils, the Police and Crime Commissioner and the Chief Constable, and the resulting revisions to the Scheme.
2. Note and agree the proposed 2 stage consultation process, including the revised timetable, and revised Governance Review and Scheme [Appendix A and B] to be consulted upon.
3. Agree to receive a further report at 22nd March 2019 WMCA Board detailing the outcome of the consultation. (Note proposed change of date to accommodate timetable)

1. Purpose

1.1 The purpose of this report is threefold:

- 1) To report back on feedback received from constituent councils, the Police and Crime Commissioner (PCC) and West Midlands Police (WMP) following circulation of the Scheme and Governance Review at September WMCA Board.
- 2) To show how and where this feedback has been incorporated within the Scheme and Governance Review – with the intent that both documents are now ready to be agreed by WMCA Board for public consultation.
- 3) To outline the proposed two-stage consultation route and authorise WMCA to begin this process in line with the agreed intention for a transfer of responsibilities in time for election of a Mayoral PCC in 2020.

2. Background

- 2.1 The legislative and policy background to this governance transfer is outlined in some detail within the report to September WMCA Board – with the overall mandate of effecting a transfer of governance to enable the election of a Mayor with PCC responsibilities for the West Midlands in 2020 in line with the region's second Devolution Deal.
- 2.2 The core principles of this transfer were outlined in the September Board paper, and remain as follows:
 - a) *Consistency and Continuity* – preserving the role, functions and capacities of the PCC within a Mayoral model in line with the Policing Protocol and aligning to Home Office policy.
 - b) *Distinct, Robust and Visible Police Governance* – maintaining the role of the Police and Crime Panel, and with a commitment to clear, planned and visible ongoing governance (including an ongoing role for the Strategic Policing and Crime Board) at point of transfer.
 - c) *Clear separation of the Mayor's PCC and WMCA Chair* roles – ensuring proper clarity of governance and the appropriate degree of separation between police governance and the wider politics of the WMCA
 - d) *Clarity over Budgets, Assets and Borrowing* – maintaining appropriate ring-fencing and committing to continuity over existing protocols and scheme of consent at point of transfer.
 - e) *Real Potential for Better Outcomes* – building on the 'and crime' elements of the portfolio and WMCA influence in skills, housing, transport, PSR and economic growth policy to address the causes of crime and support sustainable policing and better outcomes through collaboration.
 - f) *A Transparent and Collaborative Process* – maintaining the WMCA's commitment to working openly with the OPCC, constituent councils, WMP, the Home Office and other key stakeholders on both the content and process of this transfer. We are grateful for this ongoing engagement and support.

- 2.3 At September Board, WMCA members and the PCC agreed to take the Governance Review and Scheme back for consideration within their authorities – and to send feedback to WMCA officers by 19 October for incorporation within the iteration of the Scheme and Review presented in this report. The Governance Review outlined the current and proposed PCC model, with specific reference to areas where clarity on governance, accountabilities and operational detail were required. The Scheme provided for the underlying legislative basis for the transfer. WMCA Board also requested that more work be carried out on an appropriate consultation design – proposals for which are outlined in Section 4 below.

3. Feedback on the Governance Review and Scheme

- 3.1 We have received written feedback from a number of consultees during this phase, which are attached as appendix C. Birmingham, Dudley, Sandwell and Wolverhampton Councils indicated that they understood the Scheme and Review and had no additional comments at this stage. It will be confirmed at the Board meeting that Coventry City Council has noted the proposals around the consultations and scheme and awaits the outcome of the consultations and final proposals for consideration. Solihull confirmed that they would verbally update the Board at the meeting on November 9th with their feedback. Coventry, Walsall and the PCC communicated questions relating to a limited number of issues including:

- a) *Restrictions pertaining to the role of Deputy Mayor for Policing and Crime – specifically, the provision that active WMCA Board Members should be restricted from this role; and that appointments should be restricted to the constituent WMCA area. (paragraph 3.2 of the Scheme)* The concern expressed is that such restriction runs the risk of limiting the possible talent pool available. **To deal with this it is proposed to incorporate this as specific questions in the consultation so that we might also gauge the public's view.**
- b) *Questions pertaining to the consultation – specifically, the phasing of its two stages, and the need for assurance about the appropriate point at which analysis and communication of results should take place.* **This is dealt with in Sections 4 and 5 below.**
- c) *A need for absolute assurance as to the ring-fencing of funding and assets; and of the distinction between Mayoral PCC accountability (and attendant structures to assure this) and the wider decision-making functionality of the WMCA.* **This is dealt with in Section 5 of the Governance Review and Section 3 of the Scheme.**
- d) *Observations from WMP relating to clarity of language around the operational independence of the Chief Constable and the role of the PCP.* **These have been accepted in full.**
- e) *Request for written clarification from the Home Office that the process that they accept is being followed is via S107(f) of the Local Democracy Economic Development and Construction Act 2009.* **With regard to this it has been confirmed in writing from the Home Office that S107(f) is the legislative route.**
- f) The full response by the PCC is at Appendix C however the key highlights can be summarised as follows:
 - i. *Noting that the range of Mayoral responsibilities could limit specific attention to policing, providing less effective scrutiny and strategic leadership and more reliance and day to day delegation on the Deputy Mayor for Policing and Crime.*
 - ii. *The possibility of policing resources and assets being diverted away as they will be owned by WMCA and not as is currently the case by the PCC as Corporation Sole.*

- iii. *The possibility of Mayoral decisions on policing being susceptible to influence by the committee and board structure of the Combined Authority and other stakeholders, which could impact on the operational independence of the Chief Constable.*
- iv. *A concern that future boundary changes could be problematic where they do not align to the PCC area.*
- v. *Concern that there is no proposed evaluation between the first and second stages of consultation.*

We believe the Review, Scheme and underlying legislation provide assurance as to these concerns:

- The Police Reform and Social Responsibility Act of 2011 creating the role of PCCs was enacted some 5 years before the Cities and Local Government Devolution 2016 Act which created the role of Combined Authority Mayors. The 2016 Act provided a new legislative route for the potential transfer of PCC roles and responsibilities to elected CA Mayors by amending the 2009 Act and inserting Section 107F and Schedule 5C. It must therefore be assumed that, in approving this specific legislation, Parliament gave appropriate consideration to some, if not all, of the issues being raised and was content that appropriate safeguards were in place.¹The Order will provide for all of the current PCC powers and responsibilities to be exercisable by a Mayor also holding the PCC role. Apart from any required consequential changes, the current legislation in the 2011 Act – which sets the parameters for the role and operation of PCCs – will remain in full force and apply as much to a mayoral PCC as to any other PCC. The limitations on delegations will remain the same as is currently the case for the PCC and as such it will be for the Mayor to determine what they decide to delegate or not. Accountability will clearly remain the same in respect of the two models.
- The Order will also specifically provide for the transfer of resources and assets. Whilst they will be owned by the WMCA the Order will provide for decisions regarding their use being restricted to the Mayor.
- In terms of any possibility of outside influence on the discharge of this role, the role will clearly be a mayoral function and decisions will be for the Mayor or any Deputy Mayor for Policing and not subject to approval or decision of other parts of the Combined Authority governance structure. The Mayor will be required to swear the same oath of impartiality as is currently the case with the PCC. The Chief Constable has also confirmed his position in respect of the proposals and the impact on operational independence, Appendix C.
- The impact of possible future boundary changes is covered in 5.16 of the Governance Review. It would be no different with regard to other CA wide mayoral powers such as Fire and Highways – but would indeed require careful consideration as to the implications as and when such proposals arose. We do not consider this issue sufficiently problematic to render the proposals unworkable at this point of time.
- The concern regarding evaluation between the two stages of consultation is dealt with below in paragraphs 5.2 and 5.3.

¹ It should be noted that the changes will not take place till the end of the current PCC's term and will only be part of the mayoral functions following the mayoral elections in May 2020. As such it will not affect the policies and commitments of the current PCC and the current mayor for the remainder of their respective terms of Office.

4. Consultation Principles

- 4.1 WMCA Board has been consistent about the overall timetable for this transfer (namely: to be completed in time for election of a Mayor with PCC powers in 2020); but also the need for this to be underpinned by a robust consultation as part of a commitment to devolution and local democracy. We have therefore proposed to go beyond the statutory minimum and ensure a two-stage public consultation on both the principle and the detail.
- 4.2 We outline below how this will work within the agreed timeline, working from the following underlying principles:
- a) *A two-stage public consultation* – consulting the public on both principle and detail during two separate 8-week periods (exclusive of a Christmas and New Year break).
 - b) *A key role for scrutiny* – building in two opportunities for both WMCA Overview and Scrutiny Committee (at the request of WMCA Board) and the Police and Crime Panel (at the request of the Home Office) to scrutinise and assure the process
 - c) *Appropriate legal guarantees* – taking and following Home Office, WMCA and independent legal advice that the process is legally robust and conducted along principles of good practice
 - d) *Independent question-setting and analysis* – we have engaged an independent agency accredited by the Consultation Institute, who are setting the questions objectively and after dialogue with the PCC and WMCA.
 - e) *A collaborative consultation process* – working with constituent authority governance, legal and communications teams to both assure and plan the best possible consultation.

5. Consultation Design and Analysis

- 5.1 As with previous consultations of this nature, the purpose here is twofold: to provide the Board with Public and Stakeholder views in respect of the proposal; and to provide evidence of local views to the Home Secretary. We have appointed BECG as the agency responsible for supporting the design and analysis of the consultation. The company is an accredited partner of the Consultation Institute and has experience in the West Midlands supporting the consultation on fire governance conducted in 2017. BECG has liaised with WMCA and the PCC to develop the consultation questions in as objective a manner as possible. At time of writing this dialogue remains ongoing.
- 5.2 We are proposing to follow advice from BECG on the appropriate analysis of a two-stage consultation, which is that good practice would be to move from Stage 1 to Stage 2 of the consultation without reporting interim results so as not to unduly influence the second stage. BECG have advised that *“The proposed approach by WMCA to publish the results of both stages of consultation together will provide a comprehensive account of feedback for stakeholders and the WMCA board to consider. The alternative option would be to report on each stage separately. We would advise against this, given the potential for the results of stage one to unduly influence the consultation on stage two.”*

This is reflected in the timeline below

- 5.3 Analysis of the consultation will be carried out by BECG, who will also prepare and develop the Consultation Report.

6. Explaining the Consultation Route

6.1 The proposed consultation timetable is outlined in visual form in Appendix D. A tabular version is included below. Both show the route to a governance transfer in time for 2020 elections, in accordance with the principles noted above.

Action	Who	Date
Consultation Proposals	Programme Board	26 October 2018
Seek Approval to Consult	CA Board	9 Nov 2018
Public Consultation Stage 1	CA, Constituent Councils and PCC	16 Nov - 11 Jan 2019
Police & Crime Panel	PCP Members, PCC & WMCA Officers	26 November 2018
WMCA Overview & Scrutiny Committee	Cttee membership & WMCA Officers	26 November 2018
Public Consultation Stage 2	CA, Constituent Councils and PCC	14 Jan – 11 March 2019
Police & Crime Panel	PCP Members, PCC & WMCA Officers	14 January 2019
WMCA Overview & Scrutiny Committee	O&S Cttee membership & WMCA Officers	25 February 2019
Early consultation outcomes	Programme Board	8 March 2019
Consideration of Consultation Outcomes and Approval to submit	CA Board/PCC	22 March 2019
Scheme to Home Secretary	CA	11 April 2019
Preparation of Order	Home Office	May - July 2019
Delegated Consents	CA and Constituent Councils	June – July 2019
Consent to Order	CA and Constituent Councils	End of August 2019
Lay in Parliament*	Home Office	Oct/Nov 2019
Confirmation of Order	Home Office	December 2019
Election of Mayor with PCC Powers		May 2020

* *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.*

7. Next Step and Decisions

7.1 WMCA Board is being asked to approve the above consultation process – which, according to the timeline above, means beginning stage 1 on 16th November 2018 and stage 2 on the 14th January. A report of this consultation (both stages 1 and 2) – with the opportunity to approve – will be brought to Board on 22nd March 2019.

7.2 We are grateful that the WMCA team has been able to work with Constituent Council monitoring officers (and heads of legal) and elections officers to ensure that the timeline fits with local political timetables – including avoiding the pre-election period before local elections in 2019. We are confident that each Constituent Council is aware of the timetable, understands the implications, and we are working in close collaboration to ensure the process works as well as possible.

7.3 The process from here on in – outlined in the timetable above – offers a number of opportunities for the WMCA Board to consider progress; and for individual constituent councils to do likewise. Progress through WMCA Board will be through two-thirds majority vote, and there are also points in the process (such as the Home Office request for consent, and the necessary changes to WMCA constitution) which will require unanimity. These are outlined in the table in Section 6 above and Appendix D.

8. Financial implications

8.1 The Financial implications of progression of governance arrangements and the statutory order are being met through internal resources of the WMCA, with support from the Home Office and OPCC as appropriate.

8.2 Wider costs of transition are being developed with a view to resources for transition planning being earmarked with the WMCA's annual budgeting and Medium-Term Financial Planning processes.

9. Legal implications

9.1 The legal implications in terms of legislation are outlined in previous reports. Further legal implications are reported through the Governance Review and Scheme for consideration.

10. Equalities implications

10.1 There are no direct equalities implications arising out this report.

11. Other implications

11.1 The WMCA Board has asked for the inclusive growth implications of each board paper to be outlined in this section. We are developing a set of materials that will allow officers and partners to do this robustly, which will be reflected in WMCA Board reports from January 2019 onwards.

11.2 In regards to Geographical implications these proposals only have effect within the Constituent Council areas, ie the WM metropolitan area.

12. Schedule of background papers

- Governance Review and Scheme
- Report to WMCA Board 14 September 2018

13. Appendices

Appendix A – Governance Review

Appendix B – Scheme

Appendix C – Governance Review and Scheme written feedback

Appendix D – Consultation Flow Chart