

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	6 October 2021
Subject:	Home Office Consultation – Extending the Police and Crime Commissioners Power of Competence
Report of:	Head of Community Services
Corporate Lead	Chief Executive
Lead Member:	Leader of the Council
Number of Appendices:	One

Executive Summary:

The role of the Police and Crime Commissioner (PCC) is to be the voice of the people and hold the police to account. They are responsible for the totality of policing. PCCs aim to cut crime and deliver an effective and efficient police service within their police force area. They are elected by the public to hold Chief Constables and the force to account, making the police answerable to the communities they serve.

The Government has made a manifesto commitment to strengthening the accountability of PCCs and expand their role. They are currently consulting on what powers the PCC should hold to allow them to expand their role.

The PCC has limited powers which are restricted to their policing remit. The Home Office is consulting on whether these powers should be expanded in order to allow the PCC to take a more active role in areas such as crime prevention and youth diversion. Currently the PCCs ability to undertake these upstream activities is vague and could possibly be challenged.

The report sets out the proposals that the Home Office is consulting on, which are:

- Maintain the status quo and not to expand the PCCs powers;
- Give the PCC an additional power of functional power of confidence, meaning that the PCC could expand their remit but this would still have to be linked back to policing duties; or
- Remove all restrictions on the PCC for their activities and give them a general power of competence similar to that enjoyed by local authorities.

Recommendation:

The Committee is requested to AGREE:

- a) that delegated power of authority should be given to the Head of Community Services, in consultation with the Leader of the Council, to respond to the consultation; and**
- b) that the response should indicate that the PCCs powers should not be extended any further than the functional power of competence.**

Reasons for Recommendation:

The PCC should be able to go about their role without the threat of challenge due to undertaking activities related to policing but not currently formally part of their role. Extending the PCC powers would allow them to be involved in activities such as crime prevention and youth diversion etc which is aimed at reducing crime. Therefore, extending the PCC powers to a functional power of competence would allow this but should be the limit of their powers.

Resource Implications:

None arising directly from this report.

Legal Implications:

None arising directly from this report.

Risk Management Implications:

None arising directly from this report.

Performance Management Follow-up:

None arising directly from this report.

Environmental Implications:

None arising directly from this report.

1.0 INTRODUCTION/BACKGROUND

- 1.1** The Policing Reform and Social Responsibility Act 2011 established the role of Police and Crime Commissioners (PCC) in England and Wales. The role of the PCC was to replace and reform the existing police authorities and Gloucestershire's PCC first took office in November 2012.
- 1.2** The PCC holds the "police fund" from which all policing in the County is financed and must also produce a police and crime plan which sets out his or her objectives for policing including what resources will be provided to the Chief Constable. Both the PCC and the Chief Constable must have regard to the police and crime plan in exercising their duties.
- 1.3** The Home Office are consulting on extending the powers of locally elected PCCs.

2.0 ROLE AND CURRENT POWERS OF THE PCC

- 2.1** The role of the PCC is to be the voice of the people and hold the police to account. They are responsible for the totality of policing. PCCs aim to cut crime and deliver an effective and efficient police service within their police force area. They are elected by the public to hold Chief Constables and the force to account, making the police answerable to the communities they serve.

2.2 The PCCs powers are limited and the principal powers are:

- the power to appoint, re-appoint and dismiss the Chief Constable;
- the power to set the force's budget; and
- the power to establish local priorities for the force through the police and crime plan.

The PCC may also enter into contracts and other agreements acquiring and disposing of property (including land) and borrowing money and they may also charge for special police services such as the policing of football matches or concerts.

2.3 The government has made a manifesto commitment to strengthening the accountability of PCCs and expanding their role. It is currently consulting on what powers the PCC should hold to allow them to expand their role.

2.4 Currently the PCC has a functional power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of their functions.

2.5 It could be argued that as the PCC only has powers relating directly to policing any other activity, such as youth diversion activities, carried out by the PCC could be deemed to be ultra vires.

3.0 LOCAL AUTHORITY AND FIRE SERVICES POWERS OF COMPETENCE

3.1 The General Power of Competence (GPC) was introduced by the Localism Act 2011 and took effect in February 2012. In simple terms, it gives Councils the power to do anything an individual can do provided it is not prohibited by other legislation. It applies to all principal Councils (District, County and Unitary Councils etc). It replaces the wellbeing powers in England that were provided under the Local Government Act 2000.

3.2 The GPC for local authorities has given Councils the ability to do things that they would previously have not considered such as taking part in local authority mortgage schemes or adopting a living wage policy for their geographical area without the fear that they were behaving ultra vires. There are very few boundaries associated with a GPC for local authorities.

3.3 Fire and Rescue Services (FRS) also have a wide-ranging functional power of competence (FPC) which allows them to do anything it considers appropriate for the purposes of carrying out any of its functions, as well as anything incidental or 'indirectly incidental' to those functions. This has allowed some FRSs to broaden their roles in the community and take on additional duties for example entering into agreements with their local ambulance service to provide support in times of high demand. The FPC allows greater freedom for the fire service but has more boundaries than the GPC that local authorities enjoy.

3.4 The Home Office consultation is seeking views on whether the PCCs powers should remain the same, should they have a wider FPC similar to the FRS, or whether they should have a GPC similar to that of local authorities.

4.0 OPTIONS

4.1 The options that the PCC's business case explores are summarised below.

4.2 **No change / status quo:** Respond to the Home Office Consultation to keep the PCCs powers as they are at the moment.

4.3 Wider functional power of competence: Respond that the Council supports giving the PCC wider powers similar to those held by the FRS.

4.4 General power of competence: Respond that the PCC should be given far wider powers similar to the general powers that are currently held by local authorities.

5.0 PROS AND CONS OF THE PROPOSALS

5.1 Keeping the PCCs powers as they are currently could hinder the PCC in reducing crime in the county and any activity not directly linked to policing in the locality would be open to challenge.

5.2 Extending the PCCs powers to include a wider functional power of competence would mean that the PCC could freely undertake activity that is not directly linked to their current policing role even if the proposed action is a number of steps removed from their core functions, they can still act as long as the action can ultimately be traced back sufficiently to their functions. So, it would remove the current ambiguity that exists around the PCC undertaking activity to get upstream of crime in the county such as youth diversion or other crime reduction matters. There is however a risk that the PCC may get distracted from their core business of policing.

5.3 Giving the PCC general powers of competency would remove most restrictions on the PCCs activities as the general power of competence goes further than a functional power of competence in removing the need for a link between statutory functions and the exercise of powers. The risk of distraction is greater than for a functional power of competence as the PCCs remit could be significantly expanded away from the policing role. This could also lead to confusion as to which authority is the relevant authority to undertake certain activities particularly where they are not statutory functions.

6.0 CONSULTATION

6.1 None.

7.0 RELEVANT COUNCIL POLICIES/STRATEGIES

7.1 None.

8.0 RELEVANT GOVERNMENT POLICIES

8.1 None.

9.0 RESOURCE IMPLICATIONS (Human/Property)

9.1 None.

10.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

10.1 None.

11.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

11.1 Considered in the body of the report.

12.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

12.1 None arising directly from this report

Background Papers: None.

Contact Officer: Head of Community Services.

01684 272259

Email: Peter.tonge@tewkesbury.gov.uk

Appendices: 1 – Consultation document.