

Portfolio Holder Decision

Date: Tuesday 19 October 2021
Time: 12.00 pm

Membership

Councillor Andy Crump

Items on the agenda: -

1. **Response to the Home Office Consultation on Powers of Competence to Police and Crime Commissioners**

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Monica Fogarty
Chief Executive
Warwickshire County Council
Shire Hall, Warwick

Disclaimers

Disclosures of Pecuniary and Non-Pecuniary Interests

Members are required to register their disclosable pecuniary interests within 28 days of their election or appointment to the Council. Any changes to matters registered or new matters that require to be registered must be notified to the Monitoring Officer as soon as practicable after they arise.

A member attending a meeting where a matter arises in which they have a disclosable pecuniary interest must (unless they have a dispensation):

- Declare the interest if they have not already registered it
- Not participate in any discussion or vote
- Leave the meeting room until the matter has been dealt with
- Give written notice of any unregistered interest to the Monitoring Officer within 28 days of the meeting

Non-pecuniary interests relevant to the agenda should be declared at the commencement of the meeting.

The public reports referred to are available on the Warwickshire Web
<https://democracy.warwickshire.gov.uk/uuCoverPage.aspx?bcr=1>

Public Speaking

Any member of the public who is resident or working in Warwickshire, or who is in receipt of services from the Council, may speak at the meeting for up to three minutes on any matter within the remit of the Committee. This can be in the form of a statement or a question. If you wish to speak please notify Democratic Services in writing at least two working days before the meeting. You should give your name and address and the subject upon which you wish to speak. Full details of the public speaking scheme are set out in the Council's Standing Orders.

COVID-19 Pandemic

Any member or officer of the Council or any person attending this meeting must inform Democratic Services if within a week of the meeting they discover they have COVID-19 or have been in close proximity to anyone found to have COVID-19.

Portfolio Holder Decision

Response to Home Office Consultation on Powers of Competence to Police and Crime Commissioners

Portfolio Holder	Portfolio Holder for Fire & Rescue and Community Safety – Cllr Andy Crump
Date of decision	19th October 2021
	Signed: 

Decision taken

That the consultation response in relation to the powers of competence of Police and Crime Commissioners attached at Appendix 1 is approved for submission to the Home Office.

Reasons for decision

The County Council's response (at Appendix 1) recognises that there would be benefits in giving Police and Crime Commissioners wider powers. It proposes that PCCs be given a wider functional power of competence which would give PCCs the power to undertake a range of initiatives provided they can be linked to the statutory functions of PCCs.

It is considered that a functional power of competence would be sufficient to give PCCs greater flexibility to pursue more creative and innovative initiatives, potentially collaboratively in partnership with others public sector partners, without the risk of legal challenge, whilst at the same time ensuring that those initiatives can be linked to the functions of PCCs as set out in the Police Reform and Social Responsibility Act 2011.

The more extensive general power of competence is not considered by the County Council to be necessary to deliver the objectives that appear to be sought and the granting of such a wide power would bring with it potential risks of diverting attention and/or resources away from the statutory functions of PCCs. In addition, without additional checks and balances in place on the activities undertaken by the PCC, there would be a risk that some activities undertaken in exercise of such a wide power could pose a financial/ reputational risk (particularly in relation to more commercial/ revenue

generating initiatives).

The consultation response also sets out the County Council's view of the benefits and risks of the two models proposed.

Background information

1. In concluding Part One of a two-part Review into the role of PCCs, the Home Secretary announced in March 2021 that she would consult on giving a general power of competence to PCCs. The Home Office is now consulting on providing PCCs with greater powers of competence. These powers if enacted would minimise the risk of challenge against decisions made by PCCs on grounds of ultra vires (ie insufficient legal authority / powers to make the decision).
2. The consultation seeks views on the benefits and risks of giving PCCs (including Mayors with PCC functions) greater powers of competence to improve the levers they have to prevent and tackle crime and anti-social behaviour and give them greater flexibility to drive efficiency. The consultation seeks views on the benefits, opportunities and risks of granting PCCs either:
 - i. a wider functional power of competence as held by fire and rescue authorities (combined authorities), which will include giving the PCC the power to do anything linked to their functions; or
 - ii. a general power of competence as held by local authorities, which will give them the power to do anything that an individual can do so long as it is not prohibited by legislation.
3. The consultation paper identifies four key drivers for extending powers of PCCs;
 - Putting beyond doubt their ability to tackle crime and antisocial behaviour – allowing PCCs to invest in activity that benefits the community and gets upstream of crime e.g. services to reduce offending, tackling mental health, youth diversion schemes.
 - Collaborative working – the ability to take part in initiatives which are not current statutory responsibilities, for example with other emergency services or criminal justice partners; the opportunity to be a partner in local authority private sector commercial arrangements.
 - Property regeneration and development – the ability to borrow to invest in regeneration of existing land and property; generating long-term revenue streams (rather than one-off capital receipts).
 - Commercial ventures and initiatives – the ability to develop innovative commercial opportunities, which yield additional revenue.

4. Some PCCs have identified that the wider general powers would enable them to set up a police insurance mutual, similar to the Fire and Rescue Indemnity Company mutual established by fire services and others have indicated that they could use wider powers to make more effective use of estates, for example investing in renovation of police property to provide key worker housing and charging third parties to make use of premises, such as the police firearms range, when not in use for police purposes.
5. If approved the consultation response will be submitted to the Home Office by the deadline of 27th October 2021.

Financial implications

There are no financial implications arising from this report

Environmental implications

There are no environmental implications arising from this report

Report Author	Sarah Duxbury – Assistant Director, Governance and Policy Ben Brook – Chief Fire Officer Tel: 01926 736118
Assistant Director	As above
Strategic Director	Mark Ryder – Strategic Director for Communities Strategic Director for Communities
Portfolio Holder	Cllr Andy Crump Portfolio Holder for Fire & Rescue and Community Safety

Urgent matter?	No
Confidential or exempt?	No
Is the decision contrary to the budget and policy framework?	No

List of background papers (If applicable)

Home Office Consultation document

Members and officers consulted and informed

Portfolio Holder – Councillor Andy Crump

Corporate Board and Chief Fire Officer – consulted and views incorporated

Legal – Sioned Harper

Finance – Andy Felton

Democratic Services – Deb Moseley

Councillors – Chair and Party Spokes of the Resources and Fire & Rescue Overview and Scrutiny Committee (Councillors Warwick, Birdi, Boad, Phillips, and W. Roberts)

Local Member(s): N/a



Giving Police and Crime Commissioners greater powers of competence

Government Consultation

This consultation begins on 1 September 2021

This consultation ends on 27 October 2021

Consultation Questions

Role/Job title	Strategic Director for Communities
Organisation	Warwickshire County Council

1. Do you think PCCs should be given greater powers of competence to enhance their ability to get upstream of crime issues as well as to drive efficiency and make better use of police estates?

	Please select one of the following options
Strongly agree	
Agree	X
Neither agree, nor disagree	
Disagree	
Strongly disagree	

Wider Functional power of competence

2. Should PCCs be granted a **wider functional power** of competence including the power to do **anything indirectly related to their functions, no matter how many times removed and to charge and trade?**

	Please select one of the following options
Strongly agree	
Agree	X
Neither agree, nor disagree	
Disagree	
Strongly disagree	

3. What do you see as the benefits that may come from granting PCCs a **wider functional power** of competence?

The main benefits would be

- Greater flexibility to pursue more creative and innovative initiatives, potentially collaboratively in partnership with others public sector partners, without the risk of legal challenge, where those initiatives can be linked to the functions of PCCs as set out in the Police Reform and Social Responsibility Act 2011
- Maintains PCC focus on key statutory functions
- Avoids diverting attention / resources away from the key functions of PCCs
- Avoids the potential for riskier, commercial type ventures which diverge from the role and focus envisaged of PCCs

4. What do you consider to be the risks of granting PCCs a **wider functional power** of competence?

We do not consider there to be any significant risks of granting PCCs a wider functional power of competence, other than potentially the risk of there being a lack of legal certainty around certain creative initiatives that a PCC may wish to consider in collaboration with other public sector partners, including other blue light services. However, we consider that this risk could be effectively managed and would not act to prevent a PCC from pursuing collaborative initiatives with partners which have a wider community benefit.

5. If PCCs were granted a **wider functional power** of competence, do you consider that additional safeguards or limitations on those powers would be necessary?

Yes - please provide details of what safeguards or limitations on the powers you think would be required.	
No - please explain	No – functional powers of competence have been available for combined FRAs for some time and as far as we are aware, the experience of operating this framework has not indicated that additional safeguards are required
Don't know	

General power of competence

6. Should PCCs be granted a **general power** of competence which would give them the power to do **anything** that an individual can do so long as it is not prohibited by legislation?

	Please select one of the following options
Strongly agree	
Agree	
Neither agree, nor disagree	
Disagree	X
Strongly disagree	

7. What do you see as the benefits that may come from granting PCCs a **general power** of competence?

Benefits would include

- Greater flexibility to pursue more creative and innovative initiatives, potentially collaboratively in partnership with others public sector partners, without the risk of legal challenge

8. Please explain what you consider the risks may be to granting PCCs a **general power** of competence.

- PCC is distracted from the main purpose of role and attention is diverted towards commercial enterprises / new income generating initiatives at the expense of the functional requirements of role
- Without additional checks and balances in place on the activities undertaken by the PCC, there is a risk that some activities undertaken in exercise of such a wide power could pose a financial/ reputational risk (particularly in relation to more commercial/ revenue generating initiatives) and could diverge from the role of the PCC as prescribed by legislation
- PCC could branch into activities that are the remit of local government/ other public bodies and there could be duplication of effort and cost if not exercised in collaboration/ consultation with relevant partners

9. If PCCs were granted a **general power** of competence, do you consider that additional safeguards or limitations on those powers would be necessary?

Yes - please provide details of what safeguards or limitations on the powers you think would be required.

The safeguards as for Local Authorities should apply (ie prohibition on use of this power to raise the precept and to charge for services under a statutory duty to provide, prohibition on using the general power where a specific power already exists). Additional safeguards could include a requirement to publicly report (possibly on an annual basis) on the use of the power and for what purpose, and the existing requirement to collaborate could be extended specifically to new initiatives which rely on the general power of competence for their lawful authority. Guidance in the exercise of the power could also helpfully sign post the level of due diligence

	expected before the power is utilised to ensure that the activities of the PCC remain focused on and anchored by the specific role.
No - please explain	
Don't know	

10. Given the benefits and risks of a general and wider functional power of competence, which approach would you prefer?

	Please select one of the following options
Retain existing PCC powers	
Give PCCs a wider functional power of competence, in line with the powers currently held by standalone fire and rescue authorities and some combined authorities	X
Give PCCs the general power of competence, as held by local authorities	

11. Do you consider there to be any equality impacts with granting PCCs either a wider functional or a general power of competence?

Yes - please provide details	
No - please explain	It is difficult to see how legislating to provide PCCs with a new wider power of competence could have an equality impact. However, for each occasion on which the PCC intends to exercise this power, an Equality Impact Assessment would need to be undertaken, taking into account the specific details of the initiative and the outcomes it is intended to deliver.
Don't know	

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