

**Written evidence submitted by Dr Simon Cooper, Director of Criminal Law, School of Law, University of Essex (POP0056)**

This submission of evidence focuses on the new relational accountabilities of Chief Constables, Police, and Crime Commissioners [PCCs] and Police and Crime Panels [PCPs] in England and Wales.

I hope this submission is useful to The Home Affairs Committee, Policing Priorities Inquiry – in particular, strands (1), (3) and (4).

Summary

1. My research, involving elite research interviews with some of the most senior stakeholders in policing at a regional and national level, see Cooper, S, *Police relational accountabilities: The paralysis of police accountability?* Policing: A Journal of Policy and Practice, [2022] available open access at:

<https://academic.oup.com/policing/advance-article/doi/10.1093/policing/paac081/6772611>

finds PCPs to be impotent and ineffective. Importantly, this research develops current understanding, showing the impotency and ineffectiveness of PCPs may cause a new unforeseen consequence. Namely, the exercise of accountability and the governance of policing may be unusually reactive to the ‘one-to-one’ accountability relationship between PCCs and Chief Constables.

2. Such, this new research makes recommendations to strengthen the exercise of accountability and the governance of policing. Specifically, the Home Secretary is encouraged to review the Policing Protocol Order [2011] and issue a new Memorandum of Understanding to ensure ‘effective, constructive working relationships’ are not just a quixotic pursuit but a practical reality that safeguards the governance of policing.

1. PCPs

3. PCPs have a critical role; they are solely responsible for supporting, scrutinising, providing, and maintaining a regular ‘check and balance’ on PCCs. Notably, the Local Government Association and the Centre for Public Scrutiny have observed that PCPs are primarily a scrutiny body created to ‘proactively scrutinise the PCC.’ The National Audit Office has also said that PCPs are ‘the most important check in the accountability system.’ Yet, given their key role, a number of reports and reviews have questioned the effectiveness of PCPs. Various authors have also highlighted how members of PCPs may lack time and resources to perform their roles. Further, some have questioned the effectiveness of PCPs, highlighting how PCPs may lack authority, might have limited power and, could be considered ineffectual.

2. Are PCPs ineffective?

4. Given the vital role of PCPs and the initial concerns raised, this research also examined the effectiveness of PCPs. The overwhelming view expressed by interviewees was that PCPs are entirely impotent and ineffective. This important finding is evident from interviews conducted with PCCs, Chief Constables, and, perhaps strikingly, PCPs.

5. For example, PCC B asserted PCCs are simply not concerned or fearful of their PCP due to their lack of power which can lead PCCs to 'dominate' PCPs and give 'lip service'. It was also contended that PCPs fundamentally fail to understand their role:

"The PCP doesn't really understand their role and what's expected of them. If you have a strong character as a PCC they can dominate the PCP. This affects police accountability. PCCs aren't concerned or fearful of their PCP in any way because PCCs know PCPs don't have any teeth. PCPs don't have any power so PCCs just play lip service. There needs to be a more robust process above PCPs otherwise you have no reassurance."

6. Further to expressing surprise that the PCP fails to scrutinise their Police and Crime Plan, PCC A noted how PCPs have a potential starting point of weakness. It was argued that this not only creates difficulties but could also lead PCCs to be instinctively defensive:

"What surprises me is that I would expect the PCP to take the Police and Crime Plan and scrutinise us on elements of it and work through it; What have you done on this? What are you doing on that? The PCP is a body that's set up to scrutinise, that's a really, really hard thing to do well. Also, it makes the PCC defensive, it creates a difficult environment."

7. The possibility that PCCs could be unconcerned of their PCPs resonated with other research respondents. In addition to displaying a lack of respect for the statutory function of the PCP, PCC E stressed PCPs have no authority over PCCs describing the PCP as a 'blight' and 'pest':

"The PCP are a blight on my landscape, a pest who frankly have no authority over me at all."

8. The perceived frailties of the PCP were further highlighted by PCC D, insisting that there is simply no need for PCCs to take PCPs seriously. Further, and in a possible contradiction to Parliament's very intention, PCC D acknowledged that they actually help the PCP perform their statutory duty of holding them to account. In strong terms, it was also questioned if PCCs should be answerable to PCPs given PCCs are ultimately accountable to the electorate:

"PCCs don't need to take PCPs seriously. I have had to make all the running in enabling the PCP in holding me to account. I help the PCP scrutinise me. I could walk rings around them, but I have chosen not to. There's a very strong argument to say why PCCs should be accountable to a PCP who look just like the old Police Authority. My mandate is from the people who elected me so sod the PCP, I'll be answerable to the electorate!"

9. The impotency and ineffectiveness of PCPs were reinforced by PCP B. In a frank exercise of self-assessment, it was conceded that PCPs are powerless, and they currently fail to affectively scrutinise and therefore provide the intended and essential 'check and balance' on PCCs:

“We can't hold the PCC properly to account. The veto is not a veto, to describe it as a veto is to reinvent the word. We are toothless. We do the best we can with the powers we have. We can require the PCC to answer questions but have no sanctions if the answer is self-evidently inadequate.”

10. Advancing this, PCP E insisted PCPs are unable to effectively scrutinise the PCC due to their lack of sanctioning power. While acknowledging that it is a weak form of sanction, yet the strongest currently available, it was emphasised that the only sanctioning power available to PCPs was to publicly shame PCCs. In addition to hinting that current governance arrangements may lead PCCs to be unaccountable between elections, it was also argued that PCPs could be an abhorrent structure that's resented by PCCs:

“We have very few powers. Once we have scrutinised we can do little or nothing with the results, we can express a view or call for further reports but that's about it. We've got no sanctions, we've no one further to report to. The only power is to show the PCC up in public. That is a weak form of sanction but it's the strongest weapon we've got. PCPs can't do anything, there are no checks and balances at all. No one can stop the PCC internally. The PCC resents the PCP. The PCC views the PCP as an unnecessary after thought.”

11. PCP E also emphasised that the limited power of PCPs may mean PCCs lack a 'check and balance' and external sanction:

“I just don't think there is enough of a check and balance on the PCC. The PCP are strictly limited to what they can achieve. There should be some form of overarching executive authority over PCCs. There is a lack of external sanction. Once a PCC always a PCC!”

12. The ineffectiveness of PCPs was also acknowledged by a number of Chief Constables. For example, Chief Constable E agreed the current impotency of PCPs could lead PCCs to give lip service to PCPs. Additionally, this interviewee warned that the impuissant nature of PCPs means PCCs can in reality walk away from the body charged by statute to scrutinise them knowing PCPs are insignificant:

“My PCC views the PCP as a pain in the back side, they can't harm the PCC, they can't cause the PCC any aggravation, they can't get rid of the PCC. Therefore, it's lip service. PCPs are toothless. The most PCPs can do is shout and scream, make the PCC look embarrassed, give the PCC some poor media publicity but the reality is that the PCC can walk away from the PCP and say they don't matter.”

13. PCPs were also condemned by Chief Constable C and considered to be entirely unnecessary, highlighting how PCPs add nothing to the governance of policing as they fail to scrutinise PCCs, leading to a possible conclusion that PCCs are ‘unchallengeable’ and ‘uncensored’ between elections:

“There is no point in a PCP, they add no value at all to governance in the Police. What I need as a Chief Constable is a PCP that did have the ability to robustly challenge the PCC, not ask questions and make recommendations. PCPs result in no additional scrutiny at all. We must ensure PCPs do have a legislated ability to be able to robustly hold the PCC to account. PCCs are unchallengeable and uncensored up to the point of the next election.”

14. This argument was also acknowledged by Chief Constable D, observing the ineffectiveness of PCPs means PCCs are currently not effectively exposed to accountability. In a broader context, it was also highlighted how current governance arrangements lack clarity, could be inconsistently exercised and may even impact the governance of policing:

“PCPs are not effective in exposing the strengths and weaknesses of the accountability of PCCs. PCPs lack judgement. Who is the PCC responsible to and how do we ensure that the standards are being maintained consistently throughout and there is some type of consequence should PCCs fall short. This should be a natural part of any governance process. When we are protecting something as precious as the governance of policing it has to be clear, and it has to be solid. Currently, it lacks rigour, it lacks clarity.”

15. These findings develop previous observations as PCPs are seen to be entirely impotent and ineffective. PCCs state they are unconcerned, unfearful, and give PCPs lip service safe in the knowledge that the PCP is an unnecessary and toothless entity with no power

16. These research interviews also show that PCPs may currently fail to understand their role and further to presenting themselves as an entity which the PCC ‘resents’ and ‘views as an unnecessary after thought’, PCPs acknowledge that they are unable to scrutinise the PCC as they possess no sanctioning power. Indeed, PCP E described ominously how PCPs are powerless contending there are no checks and balances and no one can stop the PCC. PCPs may currently fail to hold PCCs to account, leading PCP E to candidly conclude ‘once a PCC always a PCC’.

17. Reinforcing these concerns, Chief Constables highlight how PCPs are ineffective and add no value to the governance of policing, resulting in PCCs being perceived by research respondents as unchallengeable, uncensored, and unaccountable between elections. Further, Chief Constables considered PCPs toothless meaning in practice PCCs can give lip service, ignore, and walk away from PCPs.

18. This research also finds the governance arrangements introduced by the PRSRA 2011 and Policing Protocol 2011 may lack consistency, clarity, and consequence. Therefore, this research suggests that PCPs could be fulfilling nothing more than a symbolic function as they may not be discharging their scrutiny role. If PCCs are not benefiting from scrutiny by PCPs, there may indeed be limited accountability of PCCs between elections as current governance

arrangements make PCPs exclusively responsible for scrutinising and providing the coveted ‘check and balance on the PCC’.

19. Importantly, this research also finds that the impotency and ineffectiveness of PCPs may cause a new unforeseen consequence. Namely, the exercise of accountability and the governance of policing could be unusually reactive to the ‘one-to one’ accountability relationship between PCCs and Chief Constables.

3. Is the exercise of police accountability and the governance of policing unusually reactive to the ‘one-to one’ accountability relationship between PCCs and Chief Constable?

20. This research develops the CSPL observation in 2015 that ‘the personal dynamic between PCC and Chief Constable could impact on accountability’ finding the exercise of police accountability and the governance of policing may currently be unduly reactive to the influence of the ‘one-to one’ accountability relationship between PCCs and Chief Constables.

21. Therefore, this research suggests the impact of the ‘one to one’ on the accountability and governance of policing may be far greater than previously thought.

22. This new finding is evident from the interviews conducted for this research with a number of PCCs, Chief Constables, PCPs, and Person Z. For example, Chief Constable B argued police accountability is overly reactive to the accountability relationship between PCC and Chief Constable, pin-pointing ineffective PCPs as the cause. The ‘one to one’ was also defined by this research respondent as absolutely critical and a relationship that in practice can be both productive and destructive:

“I am concerned that an organisation’s future could be absolutely reliant upon how the PCC and the Chief Constable get on. That’s not right. If there’s a major falling out between the PCC and Chief Constable it’s the organisation that then suffers. The relationship between the PCC and the Chief Constable is absolutely critical. PCPs are toothless. They have no remit. A lot will depend on who your PCC is. There are some parts of the Country where you could put a blue or red rosette on a donkey, and they’d get elected as the PCC!”

23. This interviewee also stressed that they considered themselves privileged and lucky, warning that the reality in some police areas is that some Chief Constables have ‘awful’ relationships with their PCCs:

“Chief Constables around the country are not in the privileged position that I’ve been in. I am one of the luckier ones. I know some of my colleagues have awful relationships with their PCCs, incredibly difficult. The relationship between the PCC and the Chief Constable is incredibly important, the relationship between the two is absolutely critical.”

24. The possibility that the exercise of police accountability may be overly reactive to the relationship between PCC and Chief Constable was further acknowledged by PCC A. This research respondent considered the relationship all-encompassing yet, perhaps concerningly,

open to and conditional on the PCC and Chief Constable being able and willing to form a good accountability relationship, thereby avoiding a potentially deleterious one:

“Everything is about relationships. At the moment there is a lot of willingness to have good relationships. What we can’t have is one of those relationships where you have sniping and warfare. If you have that all that happens is that everybody in both organisations tries to find a way through, everyone gets by-passed and nothing sensible gets done so we will not have that in [this police area].”

25. PCC B also recognized how police accountability might currently be overly reactive to the ‘one-to one’ relationship, insisting that while it shouldn’t be, in reality it is. Further, the exercise of accountability was argued to be contingent on, and therefore unduly subject to, the influence of the PCCs or Chief Constables strength of character:

“A lot depends on the individual and how strong they are ... police accountability comes down to the relationship and character of the people involved. Ultimately police accountability is about the relationship between Chief Constable and PCC.”

26. A wider impact of a dysfunctional relationship between PCC and Chief Constable was argued by Chief Constable E. In addition to expressing concern that the accountability relationship between the two has in many police areas proved ‘fractious’, it was observed how a turbulent relationship could also impede the PCC’s ability to scrutinise Chief Constables:

“If you had a relationship with the PCC that was a bit fractious, and that’s happened in many forces, I am not sure PCCs would have the ability in their day to day setup to get into the detail. My analytical team provides me with information about how we are doing against everything. We present that to the PCC. The PCC has one analyst who just has a quick look at what we present. So, so in effect, the PCC is trusting our analytical data as opposed to scrutinising it themselves.”

27. The relationship was also acknowledged as having a consequential impact by PCC D, maintaining that police accountability is dependent on an effective accountability relationship between PCCs and the Chief Constables:

“Police accountability will be more or less effective because of the relationship between Chief Constable and PCC.”

28. This influence was also noted by PCC C, recognizing how the relationship between the two is significant. Further, this interviewee highlighted how the ‘one to one’ should not be driven by personality but should instead be challenging and ‘workmanlike’:

“The relationship between PCC and Chief Constable certainly has a very big influence, police accountability comes down to the PCC and Chief Constable ... ultimately police accountability is about relationships ... it’s not meant to be a lovey dovey [sic] relationship,

mutual respect, workmanlike. If there are things that are wrong say so ... what you need is a relationship of mutual respect, very workman like but you have got to be challenging. There's no point being a wet sippy date."

29. Chief Constable A also accepted that the 'one to one' carries the risk of personalization. This interviewee also underlined how the advent of PCCs made the actual people responsible for securing police accountability profoundly significant. Further, this research respondent contended that the 'one to one' imbeds a different and uncharted dynamic that potentially leaves the exercise of police accountability susceptible to the unorthodox relationship between PCCs and Chief Constables:

"The relationship going to one person makes the nature of the relationship absolutely critical. It becomes difficult if individuals let it become personalised, it can easily become quite a bitter relationship. The people involved is [sic] absolutely critical ... a lot of the work we did was putting the structure in place. There was no model at all. With almost wet towels over our heads we had to think: What is accountability? What does it look like? How does it work? We had to start from scratch. These new relationships have brought a completely different dynamic. Is police accountability open to the vagaries of individuals? Yes, absolutely."

30. Echoing this, Person Z recognized how the relationship between Chief Constables and PCCs is unusual, potentially problematic, and one that the exercise of police accountability is uncharacteristically subject to and overly dependent on:

"There is a concern about the 'one to one' relationship ... police accountability goes from a collective form to a very focused. We are concerned about the 'one to one' and there have been those difficult relationships which are part of the 'one to one' issue. The 'one to one' is quite unusual actually and potentially quite problematic because if there are difficulties there is no one to mediate but also the potential for it to be too cosy as well. Yes, police accountability does fall, not just on the relationship but also on the calibre, experience and wisdom of the person elected as PCC and believe you me that varies enormously!"

31. Further to highlighting that the exercise of police accountability is overly reactive on the 'one-to one' accountability relationship, Chief Constable D broadened the argument by defining the dependency a significant anomaly of current governance arrangements that requires amendment:

"Police accountability comes back to the individuals concerned, the PCC and the Chief Constable, and that's a flawed system. There is significant risk that the 'one to one' relationship becomes excessively hostile or excessively friendly. If you had an effective Police and Crime Panel, a PCC with values and a Chief Constable with sufficient character to recognise their responsibility to protect the independence of policing the model is a sound one, but there is quite a few 'ifs' in

there! The model needs to be balanced and it can't be argued that it has consistently delivered. Therefore, some form of change and rigour is required."

32. This potential flaw was also asserted by PCP E, outlining how the inability of PCPs to resolve a potentially strained relationship between PCCs and Chief Constables is an abnormality of current police governance arrangements:

"If [this police force] ended up, as some forces have done, with a real disconnect between the Chief Constable and the PCC then the inability of the PCP to do anything about it would be significant."

33. This research develops the CSPL's finding that the personal dynamic between PCCs and Chief Constables could impact on accountability, showing that the current deficiencies and impotency of PCPs may cause the exercise of accountability and the governance of policing to be unusually reactive to the 'one-to-one' accountability relationship between PCCs and Chief Constables.

34. This research finds this accountability relationship to be absolutely critical to the exercise of police accountability yet problematic, fractious, possibly unpredictable, and potentially unproductive. This research also draws attention to how the unorthodox 'one to one' is unchartered and could be visceral as it carries the risks of personalisation.

35. The relationship may also be conditional on the PCCs' or Chief Constables' calibre and their shared willingness and ability to form a conducive relationship. When their accountability relationship fails, or becomes fractured as this research indicates it may already be in at least some police areas, the inability of PCPs to intervene, and if needed moderate, is a further highlighted anomaly of the governance arrangements introduced by the PRSRA and Policing Protocol in 2011.

36. The HAC and the Government concluded with both parity and vigour that the Policing Protocol is the 'statutory foundation' of the relationship between PCCs and Chief Constables. Yet, the High Court in 2017 described the Policing Protocol an 'unusual' piece of legislation (*R (Crompton) v Police and Crime Commissioner for South Yorkshire* [2017] EWHC 1349 (Admin), para 71) and the House of Commons in 2021 considered the Protocol vague and open to interpretation.

37. Importantly, this research shows the relational requirements that the Policing Protocol sets for the accountability and governance of policing may in reality be fanciful, certainly subject to a high degree of variance, and likely not achieved in at least some police areas in England and Wales.

38. Such amendments to the Policing Protocol are encouraged to ensure it fulfils its statutory function. Therefore, this research calls on the Home Secretary to take a more hands-on strategic role and exercise their duty to consult the parties bound by the Policing Protocol to examine if the Protocol needs to be revised or indeed replaced.

39. Strengthening the role and powers of PCPs is an obvious and important recommendation. However, given the new corrosive risk that this article shows, this research calls on the Home Secretary to introduce a new Memorandum of Understanding to bind PCCs and Chief



Constables to ensure ‘effective, constructive working relationships’ are not just a quixotic pursuit but a practical reality that helps safeguard the accountability and governance of policing.

40. This new Memorandum of Understanding should be a formal agreement that’s practically accessible and prescriptive to PCCs and Chief Constables. Further, it needs to give clarity and terms need to be clearly stated to avoid any potential for misinterpretation—thereby bringing much needed consistency across England and Wales. The findings reported here are important. Overlooking them and the recommendations this research makes at such a changing and challenging time for the accountability and governance of policing could be regrettable as policing is at a critical juncture.

41. In addition to strengthening the role and powers of PCPs and calling on the Home Secretary to review or replace the Policing Protocol, this research recommends a new Memorandum of Understanding to promote and then embed a positive accountability relationship between PCCs and Chief Constables.

#### 4. Conclusions and Reform Recommendations

42. While the reforms introduced by the PRSRA and the Policing Protocol conceivably streamline the operation of police accountability — this research finds that the relational accountabilities injected into the accountability and governance of policing in 2011 may be unbalanced, untested, and risky.

43. This research shows PCPs to be considered by those close to the system to be entirely impotent and ineffective, rendering the accountability and governance of policing unusually reactive to the ‘one to one’ accountability relationship between PCCs and Chief Constables.

44. Notably, the interviews conducted for this research draw attention to how PCPs could in practice be symbolic, potentially leading the exercise of police accountability and the governance of policing to be unusually reactive to the ‘one to one’ accountability relationship between PCCs and Chief Constables.

45. Therefore, this research shows that the impact of this relationship might be more significant than initially thought as the ‘one to one’ is found to be absolutely critical to police accountability, yet a relationship that can be easily strained, contingent on and therefore unduly subject to, a shared consensus whilst also carrying the risks of personalisation and dysfunction.

46. The ‘one to one’ is also found to be problematic, possibly unpredictable, and, in the absence of PCPs being effective and credible, potentially unproductive. In a broader context, as currently formulated, this research shows the relational accountability between PCCs and Chief Constables could even be considered a flaw of current governance arrangements. What is clear, is that the unforeseen risks this research finds with the ‘one to one’ and the possible impact on the accountability and governance of policing suggests urgent review is needed.

47. In addition to recommending that the role and powers of PCPs be strengthened, a key conclusion of this research is that the Home Secretary must exercise their statutory power and

(POP0056)

consult with the parties bound by the Policing Protocol to examine if the Policing Protocol should be varied or possibly replaced.

48. Further, this research calls on the Home Secretary to introduce a Memorandum of Understanding to bind PCCs and Chief Constables to ensure 'effective, constructive working relationships' are not just a quixotic pursuit but a practical reality that helps safeguard the accountability and governance of policing.

I hope this written submission of evidence is useful to The Home Affairs Committee.

If I can provide any further information and / or assistance, please do not hesitate to contact me.

October 2022