

Report title	Governance Review and Scheme for the Transfer of the West Midlands Police and Crime Commissioner Functions	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Roger Lawrence Leader of the Council	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	Jennifer Brake, Service Director of Strategy and Change	
Originating service	Public Service Reform	
Accountable employee	Jennifer Brake Tel Email	Service Director of Strategy and Change 01902 555332 Jennifer.Brake@wolverhampton.gov.uk
Report to be/has been considered by	West Midlands Combined Authority Board	14 September 2018

Recommendations for decision:

The Cabinet is recommended to:

1. Consider the prepared Governance Review and Scheme outlining the proposed model for Mayoral West Midlands Combined Authority governance of the West Midlands Police and Crime Commissioner functions, and feedback to West Midlands Combined Authority Board.
2. Approve to delegate authority to the Leader of the Council, in consultation with the Managing Director, to make minor amendments to the Governance review and Scheme on completion of the Local Authority approval process and prior to public consultation.

Recommendations for noting:

The Cabinet is recommended to note:

1. The proposed public consultation for the scheme and proposed governance model will start following the West Midlands Combined Authority Board meeting on 14 November 2018.
2. The next steps and timetable to meet single Mayoral Police and Crime Commissioner elections in 2020.

1.0 Purpose

- 1.1 The purpose of this report is to consult constituent authorities on the prepared Governance Review (attached at Appendix 1 to this report) and Scheme (attached as Appendix 2) for the proposed Mayoral West Midlands Combined Authority Police and Crime Commissioner governance model, prior to going out for formal public consultation.

2.0 Background

- 2.1 The second Devolution Deal for the West Midlands confirmed that, in addition to continuing the transfer of West Midlands Fire and Rescue Service governance to the West Midlands Combined Authority (WMCA), “the government, the WMCA and the Police and Crime Commissioner 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”.
- 2.2 When considering the Devolution Deal on the 9 February 2018, the WMCA Board agreed that “the Government, West Midlands Combined Authority and the West Midlands Police and Crime Commissioner will enter into discussions with the Mayor regarding a governance model for incorporating the role and powers of the Police and 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 and Crime Commissioner”.
- 2.3 At the WMCA Board meeting of 20 July 2018, the WMCA Board agreed to “the development of a Governance Review and Scheme to enable the proposed amalgamation of the functions of the West Midlands Police and Crime Commissioner into the Mayoralty for the elections to be held in 2020”.
- 2.4 At the WMCA Board meeting of 14 September the WMCA Board agreed to the following:
 - a. To note progress on the development of the Governance Review and Scheme outlining the proposed model for Mayoral West Midlands Combined Authority governance of the West Midlands Police and Crime Commissioner (PCC) functions.
 - b. To request that this report and attached Governance Review and Scheme are considered by Constituent Authorities and the PCC in line with the requirement to elect a Mayor with PCC responsibility in 2020, as agreed by the Board on 20 July 2018.
 - c. To agree to receive a further report at November 2018 WMCA Board detailing the outcome of the Constituent Councils and Police and Crime Commissioner consideration of the content of the Governance Review and Scheme and setting out the public consultation process.

3.0 Rationale

- 3.1 West Midlands Police (WMP) is the largest police force outside of London. It is a critical public service within the region and plays a significant role in national policing and counter-terrorism. The governance of policing within the region is in line with this profile. The Police and Crime Commissioner plays a key role securing the efficiency and effectiveness of the WMP (under powers granted within the Police Reform and Social Responsibility Act 2011 which are outlined in the Governance Review section 2.1 and 2.2), and has developed a portfolio of activities both regionally and nationally which address the wider determinants of crime, the demands on contemporary policing, and the wider societal role of a high profile, democratically elected individual within the region.
- 3.2 The changes proposed within the Governance Review and Scheme take this established role and profile as a starting point. They seek to protect and build on the successes of the model to date, and show how the governance of policing will evolve in line with the devolution process and wider changes in the governance and delivery of services to the public across the region and nationally. They demonstrate how we can ensure continuity through transition; and maintain the consistent, visible and robust accountability currently demonstrated through the statutory function of the Police and Crime Panel, and through maintaining the role and function of a Strategic Policing and Crime Board at the point of transfer.
- 3.3 The Governance Review and Scheme provide clarity on the role of a West Midlands Mayor acting as the PCC and the arrangements, accountabilities and delegations that enable the role to be discharged effectively in practice. They clarify the appropriate separation between a Mayor's role as PCC and as Chair of the Combined Authority – drawing on Home Office, Office of the PCC and stakeholder advice to ensure that the model does not blur lines of accountability, and can continue to provide visible, consistent and clear policing governance.
- 3.4 The Governance Review and Scheme also suggest areas in which a West Midlands Mayoral PCC model can realise additional benefits across the policing and crime portfolio of a PCC, and for public service outcomes within the West Midlands more broadly. This would be supported in practice by the production of a Police and Crime Plan and a WMCA Business Plan that are necessarily distinct (as per provisions on police and crime plans set out in the 2011 Police Reform and Social Responsibility Act), but strategically aligned and mutually reinforcing.

4.0 Proposal

- 4.1 In line with the Cities and Local Government Devolution Act 2016 (Schedule 2), it is proposed that the Mayor will exercise in the Combined Authority Area all PCC functions. This is consistent with the current PCC model for policing governance, namely: a single, accountable individual responsible for the discharge of PCC functions who is directly elected by the public. In effect, the role, function and responsibilities do not change, from 2020 they are discharged by the Mayor who becomes the PCC. This is underpinned by a number of key underlying principles which are backed up by legislative and policy detail within the Governance Review and Scheme:

- 4.2 *Maintaining the role, functions and profile of the PCC.* The underlying principle here is of 'continuity', in that all PCC powers will transfer to the Mayor – who will be elected as a Mayor with PCC powers in 2020, with all of the responsibilities, accountabilities and restrictions that go with these powers. An important difference between the underlying legal basis for the current model and the Mayoral PCC model is that the status of PCC as 'Corporation Sole' will change. The meaning and implications of this are explained, and the future proposal further clarified in section 2.3, section 2.5 and within section 5 of the Governance Review. The Review outlines explicitly ways in which the important protections and assurances currently afforded by this legal status will be maintained within the Mayoral model in future. These have been worked up in collaboration with the Home Office.
- 4.3 *Providing assurance as to the ongoing importance and visibility of the PCC role.* As outlined above, the PCC has responsibility for both ensuring effective governance of policing in the region, and for a wider portfolio (usually described as the 'and crime' elements of the role). It is important to us that this governance role continues to be visible and robust, and that this wider portfolio is built upon and further developed. The Review outlines ways in which this will be done, such as the ongoing role of the statutory Police and Crime Panel, proposals to maintain on point of transfer a function which is in line with the current PCC's Strategic Policing and Crime Board, and clarification of the role, scope and importance of a Deputy Mayor for Policing and Crime.
- 4.4 *Guaranteeing arrangements to ensure operational independence for the Chief Constable.* The operational independence of the WMP is a key underlying principle of the PCC models. The Chief Constable is a 'Corporation Sole' and this will remain the case. The clear proposal outlined here is for this operational independence to be maintained: both within the underlying legislation proposed in the Scheme, and through the commitments made to continue current good practice around delegations, contracts, finances and to maintain the current scheme of consent at point of transfer. These are outlined within the Governance Review in Section 5.
- 4.5 *Ensuring that good governance and robust accountability are maintained.* It is vitally important that the integrity and professionalism of police governance will continue under a Mayoral PCC model. The Governance Review therefore shows how this will be maintained through a number of the assurances noted above (explained within Section 5); through a commitment to continue arrangements such as the Strategic Policing and Crime Board at point of transfer; and through a commitment to the transfer of OPCC officers through TUPE arrangements that will ensure continuity of support functions.
- 4.6 *Ensuring the whole scope of the PCC role is sustained and built upon.* The current role and profile of the PCC covers a range of activities (the 'and crime' functions) which we would seek to continue and build upon. A number of these are outlined in the Governance Review section 2, and the ways in which a Mayoral PCC model could build on these to generate wider synergies and public service reform benefits are outlined in section 4. It is proposed that, in line with the commitment to continuity for the Office of the Police and Crime Commissioner staff, contracts and undertakings, this portfolio of activities are sustained at point of transfer, after which they will be subject to

the discretion of a Mayoral PCC much as they would any elected PCC.

4.7 *Providing guarantees that key PCC functions related to finance, assets, borrowing and contracts will remain ring-fenced and distinct from wider WMCA activities.* The Governance Review outlines specific ways in which functions currently guaranteed under the 'PCC as Corporate Sole' model would be guaranteed under a Mayoral PCC model, including:

- Properties, Rights and Liabilities – All decisions relating to PCC functions, and relating to assets, rights and liabilities, will be for the Mayor as a directly elected individual, and exercised solely by the Mayor unless delegated appropriately. It is important to note that all police assets and funding will remain ring-fenced and for use within the policing service. These points are explained in the Governance Review section 5.6.
- Appointments & HR – All current staff within the Office of the Police and Crime Commissioner will transfer to the WMCA under TUPE arrangements. The Mayoral Office of Policing and Crime (Mayoral OPC) will be an independent function managed by a Mayoral OPC Executive Director' (a post mirroring the current Chief Executive of the Office of the PCC). The Mayor would be involved with the appointment. This is explained in Section 5.7 of the Governance Review.
- Borrowing – The WMCA will have the same borrowing rights for Mayoral PCC functions that are currently enjoyed by the PCC. The Mayor will be responsible for decisions relating to borrowing (as laid out in the Revised Financial Management Code of Practice for Policing). The cost of such borrowing will be met from Police funds and kept separate to the discharge of other Combined Authority Functions in line with the ring-fencing of Police Funds outlined in Section 5.11 of the Governance Review.
- Contracts – decisions on entering into contracts regarding police matters are the responsibility of a PCC, with scope for some delegation to the Chief Constable. This arrangement will remain in place by law – giving the Mayoral PCC responsibility for all contracts, discharged in practice through a 'scheme of consent' that we would maintain along current lines at point of transfer. This is explained in further detail in the Governance Review section 5.12.
- Police Funds and Police Precept – the Governance Review outlines how the ring fencing of police funds will work in Section 5.10, including maintaining a distinct finance director role within the Mayor's Office of Policing and Crime, and replicating current joint-audit arrangements in place between WMP and West Midlands Office of the Police and Crime Commissioner. The policing precept will be separate from any Mayoral precept and will be set by the Mayor following consultation with the Police and Crime Panel. This is clarified in Section 5.10 of the Governance Review.

4.8 Clarifying the role and scope of the Mayoral PCC, Deputy PCC and appropriate delegations. There are clear statutory provisions governing the ability of a PCC to delegate certain functions to a Deputy PCC or anyone else. Certain functions may not be delegated, which are:

- Issuing a police and crime plan
- Setting the police budget including the council tax requirement; and
- Chief Constable appointments, suspensions and dismissals.

This will not change under proposed arrangements, as explained in Section 5 of the Governance Review. Functions that may be delegated to a Deputy Mayor for Policing and Crime (DMPC) are also outlined in section 5.4 of the Governance Review, and will be subject to existing statutory prescriptions.

4.9 The Mayor will appoint a DMPC who will provide a strong role in supporting the Mayor in discharging PCC functions. This DMPC needs to be visible and credible (both within the region and nationally), commensurate with the needs of a large police force and in line with the current visibility and presence of the PCC currently. Proposed legislation will exclude Board Members of the Combined Authority from the DMPC role, and will restrict the role to those residing within the Combined Authority area. This is explained further in section 5.3 of the Governance Review.

4.10 Ensuring a robust consultation process which gives stakeholders and the public the opportunity to input. The WMCA Board has committed to going beyond the strict legal requirements to propose a robust consultation with stakeholders and the public to ensure the best possible arrangements for the West Midlands. Progress on consultation plans and the implications within the agreed timeline are outlined in section 5 of this report.

4.11 *Ensuring that transition arrangements are as seamless as possible* – As outlined in various sections above, we propose minimum disruption through the process of electing a Mayoral PCC through the TUPE transfer of current OPCC staff to the WMCA; commitments to ensure continuity of all OPCC protocols and arrangements at point of transfer; underpinned the legal guarantees around finance, contracts, delegations and borrowing outlined above. Section 5 of the Governance Review outlines this in more detail.

5.0 Next Steps

5.1 Following Constituent Council and WMCA Board agreement to proceed to a public consultation on the Governance Review and Scheme, the public consultation will begin in November 2018. The WMCA are currently designing the consultation and have taken independent legal advice, sought advice from the Consultation Society, and are in ongoing discussions with the Home Office to ensure that the proposition brought back to the WMCA Board in November is fair, lawful and robust.

5.2 The indicative timetable is provided in the table below, showing that the 8 March 2019 is the point at which Board approval to submit the scheme will need to be given. WMCA will

continue to work up options for the consultation which may impact on the timeline to that point, and which will be brought back to the WMCA Board in November.

Details	Action by whom	Action date
Programme Board		6 July 2018
Approval to prepare Governance Review and Scheme	CA Board	20 July 2018
Governance Review and Scheme Completed	CA / PCC	Completed by end of August 2018
CA Board consider the Governance Review and Scheme	CA Board	14 September 2018
Constituent Authorities and PCC consider Governance Review and Scheme and feedback comments to CA Board	Constituent Authorities / PCC	September/October
Seek Approval to Consult	CA Board	9 November 2018
Public Consultation	CA, Constituents and PCC	19 November 2018 – 14 January 2019
Consideration of Consultation Outcomes and final approval by Constituent Authorities/PCC	Constituent Authorities / PCC	January 2019 / February 2019
Approval to submit	CA Board / PCC	8 March 2019
Scheme to Home Secretary	CA	Mid-March 2019
Home Secretary Approval	Home Office	April 2019
Preparation of Order	Home Office	April 2019 – July 2019
Agreement to Order	CA and Constituent Authorities	August 2019
Lay in Parliament*	Home Office	October 2019 / November 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.

6.0 Evaluation of alternative options

6.1 When considering the Devolution Deal on the 9 February 2018, the WMCA Board agreed that “the Government, West Midlands Combined Authority and the West Midlands Police and Crime Commissioner will enter into discussions with the Mayor regarding a governance model for incorporating the role and powers of the Police and 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 and Crime Commissioner”.

7.0 Reasons for decision

7.1 On 14 September 2018, the WMCA Board agreed that the Governance Review and Scheme are considered by Constituent Authorities and the PCC before formal public consultation, in line with the requirement to elect a Mayor with PCC responsibility in 2020, as agreed by the Board on 20 July 2018.

8.0 Financial implications

8.1 The cost of the public consultation will be met by the WMCA. Future reports to the WMCA Board will detail the anticipated costs as the nature and type of consultation is determined.

8.2 The cost of progression of governance arrangements and the statutory order will need to be identified and found through WMCA resources, with agreed support from the Home Office. If further costs and funding issues emerge through subsequent transition planning these will be detailed in future reports to Cabinet and the WMCA Board.

[GE/02102018/H]

9.0 Legal implications

9.1 The legal implications and process are outlined in this report.

9.2 WMCA have been consulting with the heads of legal services from all seven constituent local authorities for advice and guidance.

9.3 All relevant legislation pertaining to this governance route has been detailed on the Governance Review and Scheme.

[TS/05102018/Q]

10.0 Equalities implications

10.1 There are no direct equalities implications at this stage, however participants from all equality teams will be invited to comment during the consultation process.

10.2 Once consultation has been completed, an equalities impact assessment will be undertaken in line with City of Wolverhampton Council’s equalities procedures.

11.0 Environmental implications

11.1 There are no environmental implications relating directly to this report.

12.0 Human resources implications

12.1 There are no human resource implications for City of Wolverhampton Council relating to this report. Under the proposals, the Office of Police & Crime Commissioner staff will be subject to TUPE to the West Midlands Combined Authority.

13.0 Corporate landlord implications

13.1 There are no corporate landlord implications relating to this report.

14.0 Schedule of background papers

14.1 [West Midlands Combined Authority Board 14 September 2018](#)

14.2 [West Midlands Combined Authority Board 20 July 2018](#)

15.0 Appendices

Appendix 1 – Review of Governance Functions of the West Midlands Combined Authority.

Appendix 2 – West Midlands Combined Authority, Scheme for the transfer of police and crime commission functions