



To: Business Coordination Board
From: Office of the Police and Crime Commissioner
Date: 25th April 2013

STAGE TWO STAFF TRANSFERS

1. Purpose

- 1.1 On 27th March 2013 the Home Secretary wrote to all Police and Crime Commissioners to direct them under paragraph 10(1) of Schedule 15 to the Police Reform and Social Responsibility Act 2011 to make a staff transfer scheme and submit it to her for approval by 16th September 2013. This report:
- Provides some technical background with respect to stage two staff transfers.
 - Considers possible approaches available to Cambridgeshire with respect to preparing our transfer scheme.
 - Proposes a way forward to ensure the appropriate work is completed prior to the deadline in September 2013.

2. Recommendation

- 2.1 That further work is undertaken to refine and explore the options below, including how this relates to future collaboration work.

3. Background

- 3.1 At midnight on the 21st November 2012, Police Authorities ceased to exist and by law, all land, assets, liabilities, contracts, legal proceedings and employed staff transferred automatically from the police authority to the newly created PCC. This was referred to as the 'Stage One' Transfer.
- 3.2 On the 22nd November 2012, the Act created two new corporations sole; 'The Commissioner' and the 'Chief Constable'. A corporation sole is a legal entity which can employ staff, hold rights, have liabilities and own property. Prior to the 22nd November, Chief Constables were not legal entities. While they had 'direction and control' of most police staff, and some 'employer responsibilities', they could not

employ police staff.

- 3.3 The effect of making the Chief Constable a corporation sole (and therefore a legal entity) means that s/he will be able to employ staff for the first time. The Commissioner also has the ability to employ staff. It should be noted that Police Officers are servants of the crown and therefore do not have an employer as such.
- 3.4 The Police Reform and Social Responsibility Act (the Act) sets out the need for a second 'Stage Two' transfer which refers to the subsequent movement of certain staff, property, rights and liabilities from the Commissioner to the Chief Constable. The Stage Two Transfer is designed to allow elected Commissioner's the freedom to make their own local arrangements about how their functions and those of the police force will be discharged in future.
- 3.5 In September 2012, the then Minister of State for Policing and Criminal Justice set out the government's overall policy intent around stage two transfers *"operational staff under the direction and control of the Chief Constable passes to their employ and that any discussion with the Chief on those remaining with the PCC will focus on non-operational roles"*. The Minister also notes *"The scheme will need to strike the right balance locally for both parties and without doubt there will be variation of approach dependent on a wider range of circumstances"*.
- 3.6 The Home Secretary's letter of 27th March 2013 further sets out the need to ensure the division of staff allows both the Commissioner and Chief Constable to fulfil their respective functions as set out in the Policing Protocol Order 2011. The letter emphasises the intention underlying the Act that operational staff under the direction and control of the Chief Constable will pass to their employment.
- 3.7 It should be noted that there are significant and lingering concerns regarding the financial implications of creating two corporation soles with separate tax, employment and pension liabilities. Changes in primary legislation have taken place to resolve these, but additional changes are still required.

4. Functions of the Commissioner

- 4.1 The Cambridgeshire Office of Police and Crime Commissioner's Scheme of Governance sets out key functions the Commissioner must ensure are delivered. These functions include:
 - Strategic and Financial Planning
 - Holding the Chief Constable to account for performance
 - Legal contracting body management
 - Treasury management
 - Responsibility for estate and ownership of assets
 - Entering into collaboration agreements
 - Engagement and transparency
 - Driving effectiveness and efficiency both within the Criminal Justice and Community Safety area
- 4.2 The Commissioner retains a small core team who support him to ensure his statutory functions are delivered. These staff:

- Directly deliver some of the functions of the Commissioner;
- Draw upon the expertise of staff currently under the Constabulary's direction and control to support them to deliver some Commissioner functions; and
- Ensure that functions delegated to the Constabulary are delivered effectively and efficiently.

4.3 It is acknowledged that many staff within under the Constabulary's direction and control contribute to the delivery of Commissioner functions.

5. Possible approaches to developing the Transfer Scheme for Cambridgeshire

5.1 There are four broad approaches which can be taken to creating the transfer scheme.

5.2 Maintain the status quo – the stage two staff transfer scheme may set out the desire to maintain the status quo, i.e. employment of all staff remains with the Commissioner with delegation of direction and control to the Chief Constable for the majority of staff. This would ensure no disruption to business nor additional costs created due to technical changes in employment. However it would be against the intention of the Act.

5.3 Transfer of all staff to the Chief Constable other than those currently within the Office of the Police and Crime Commissioner - The transfer order could be used to transfer all staff currently under the direction and control of the Constabulary to the employment of the Constabulary. However, as set out above some of these staff have roles which straddle both Commissioner and Constabulary statutory functions. The transfer scheme may therefore not meet the criteria of ensuring the Commissioner can discharge their statutory functions. SLAs / contract agreements may be able to be created to ensure delivery of such functions.

5.4 Commissioner retaining staff currently supporting Commissioner functions The transfer order could be used to transfer all staff other than those currently contributing to the discharge of Commissioner functions to the Chief Constable. However, as set out above some of these staff have functions which straddle both Commissioner and Constabulary statutory functions. The transfer scheme may therefore not meet the criteria of ensuring the Chief Constable can discharge their statutory functions. SLAs / contract agreements may be able to be created to ensure delivery of such functions.

5.5 Collaboration and use of Section 22s – Within Cambridgeshire, most of the staff under the direction and control of the Chief Constable but contributing to the Commissioner's statutory functions could fall within the scope of collaboration. Cambridgeshire's transfer scheme may set out how section 22 agreements rather than transfer of employment of staff to the Chief Constable can ensure clear lines of demarcation of staff and in this way meet the intention of the act.

4. Recommendation

4.1 That further work is undertaken to refine and explore the options above, including how this relates to future collaboration.

BIBLIOGRAPHY

Source Document (s)	Contact Officer	Location
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