

Police and Crime Commissioners – developing and sustaining a new model of police governance in England and Wales

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Abstract

This article considers the progress of the new system of police governance in England and Wales. It assesses the responsibilities and powers of Police and Crime Commissioners and also examines local initiatives undertaken by some PCCs which have proved to have national ramifications. It evaluates the accountability of PCCs between elections and highlights the limited powers of Police and Crime Panels. It considers the convention of police operational independence, in the light of two controversial police investigations, and the potential need for PCC oversight of future publically high profile investigations. It provides an initial assessment of an important and recent Appeal Court ruling [R –v- South Yorkshire PCC, QBD 2017] which by making the PCC responsible for all police operational activity questions the tradition of constabulary operational independence. It is argued that enabling the PCC to bring a chief officer to account for all police operations could mean that potentially challenging and fruitless investigations can in the future, be avoided.

Keywords

Police and Crime Commissioners, Police and Crime Panels, Local Police and Crime Plans, operational independence, operation Midland

Introduction

In what might be seen as one of the most significant indicators of central government commitment to localism the expansion of the role of Police and Crime Commissioners [PCCs] continues to develop. Latterly this has taken the form of extending PCC responsibility from the police to include local fire and rescue services. The continuing interest in the local delivery of services exhibited by government has also been reflected in the introduction in 2017 of directly elected Metro Mayors to six cities and combined authorities in England and Wales each of which will be immediately responsible for spending on health, transport and other strategic services in their respective areas.

These developments represent, in terms of policing, a remarkable contrast to the earlier centralised model of governance within which national priorities assumed precedence and which were enforced by central intervention, national targets and an intrusive police inspectorate. In finally rejecting all of this and re-establishing local responsibility for police services the 2011 Police Reform and Social Responsibility Act has provided a launching pad for greater innovation and local dynamism in a world no longer subject to a plethora of national performance targets. But problems remain to the extent that four years in to their life PCCs are still yet to fully engage with the public. While this situation is changing there is further to go in embedding the principle of local direct election within the political culture.

The need for police governance reform

The initial response to the introduction of PCCs was to be met- as demonstrated in the first elections of 2012- by a high degree of public indifference complicated by the failure of the Home Office to provide any information about the candidates to the electorate. The 'omni-shambles' which characterised the first PCC election was to be compounded by its stand- alone nature as it was not synchronised with local government elections. Not surprisingly therefore turn-out proved to be even lower than that previously achieved in the EU elections of 2014.

Yet the evidence suggested that the need for a more effective mechanism at local level to improve police governance was certainly required. Police authorities in effect undermined by previous [Conservative] governments were no longer in a position to challenge or guide the chief officer. This was to be evidenced in a number of ways but was to be clearly demonstrated in the inaction of the police authority in South Yorkshire despite evidence of police malpractice during the Miner's Strike 1985 and later at the Hillsborough football Stadium in Sheffield.

In fairness successive pieces of legislation but particularly the Police and Magistrates Court Act [1994] severely curtailed the role of the police authority while in the name of protecting the police from political interference significantly enhanced the status and authority of the chief officer. One consequence of this proved to be the high degree of protection afforded chief constables who became impervious to any effective oversight at local level. In seeking to preserve the operational independence of the chief officer democratic accountability became a primary casualty –although, ironically, as the Thatcher government was to demonstrate a similar concern never arose in response to central intervention and national police coordination [Loveday 1986].

The steady erosion of local accountability of the police and the role of local municipal government was to be recorded elsewhere [Marshall 1964; Marshall and Loveday 1994]. The degree of autonomy exercised by chief officers was also to be, in the event of any challenge, reinforced by successive Home Secretaries who inevitably rejected them.

In doing so the attitude adopted within the Home Office was to make the case for the implementation of major reform a matter of time rather than either political or professional judgement. Ironically it proved to be the Conservative party, previously a staunch defender of the police service, which was to initiate a reform programme that reversed all of the earlier protections afforded to the police and ended the close relationship between police and central government fostered during the 1980s and early 1990s. Interestingly it proved to be Theresa May as Home Secretary from 2010 to 2017 who was the primary driver of this reform programme.

Powers of PCCs

Under the 2011 Police Reform Act PCCs have been given substantial powers. Along with being responsible for both hiring and firing the chief constable all PCCs have responsibility for developing the local crime and policing plan. Additionally a general power of competence enables PCCs to do anything that is lawful [Loveday et al 2014]. The primary aim of the legislation was to fundamentally change the relationship between chief constable and the civilian authority. In support of this the Home Office was to encourage the creation of a principal –agent relationship where the PCC as principal held his agent, the chief constable, to account. This entirely reversed the arrangements that pertained with the earlier police authorities where in reality there had been a significant role reversal with the chief officer acting as the principal and the police authority as that officer's agent. The perceived change in relationship heralded by the 2011 Police Reform Act may have in part explained the sudden departure of many senior officers prior to its implementation. Furthermore the legislation was to mark the

end of the traditional role of the Home Office as national protector of chief officers. The end of national target setting by the Home Office has been matched by the decision not to intervene in local disputes between PCC and chief constable where this might arise. One consequence of this has been a remarkable increase in the turnover of chief constables who have found themselves in dispute with their PCC. The changing relationship was in fact to encourage the Home Affairs Committee to investigate the work of PCCs in 2014 and their progress to that date [HAC 2013-14, Sixteenth Report]. This followed on from what appeared to be a sudden departure from past practice as chief officers from a number of forces were refused new contracts, invited to retire or took early retirement.

In Avon and Somerset the chief officer was, after applying for a renewal of his contract, invited to 're-apply' for his job. In HR terms this was tantamount to dismissal – a decision made by the PCC which was to be later upheld by the High Court. In Gwent the confrontation between the chief constable and PCC led the latter to question her professional competence which effectively resulted in her departure from the force. In oral evidence given later to the Home Affairs Committee the former chief officer was to make reference to what to her appeared to be the 'unfettered powers of the PCC' [Loveday et al 2014].

The interesting change in employment status held by chief officers does not appear to have presented a problem to PCCs either. In evidence to the Home Affairs Committee the PCC for Sussex, in responding to concern about chief officer turnover, was to comment that there had been considerable 'churn' at the top as many chief constables had left for a variety of reasons. She concluded however that this was not 'an unhealthy thing in any organisation' as it 'gave others opportunities to come forward' [Brunetti 2014]. This suggested that the traditional commitment to protect the chief constable had entirely evaporated and decisions made locally were not likely to be challenged by the centre.

It was also noticeable that the role held in the past by CHMIC has also fundamentally changed too. Traditionally responsible for the determination of chief constable appointments by way of drawing up short lists for all police authorities HMIC now has an advisory role although a recent judgement by the High Court suggests this function will take on greater significance in the future [R-v-PCC South Yorkshire QBD 2017]. Chief officer appointments are the responsibility of the PCC who is now only required to seek the support of the Police and Crime Panel in the final determination of the officer selected. The issue of chief officer selection has most recently been further highlighted by the current Home Secretary who has stated that directly appointed chief constables

from outside of the police service would now be encouraged by the Home Office [Hamilton 2017].

Accountability of PCCs

Given the wide ranging powers now at the disposal of PCCs the immediate concern is the extent to which they are held accountable to the public they serve. This issue was to assume some prominence in terms of the selection and payment by many PCCs of deputies and assistant PCCs. Their selection by many PCCs was to see a significant increase in the back office staff of the Office of PCC [OPCC] in many forces. Selection criteria in a number of cases proved to be quite vague and media coverage of appointments was to raise claims of 'cronyism' and bias in selection based on personal professional or party political relationships [Ludwig et al 2017].

The problem of accountability of PCCs has been compounded by the very instrument of direct election which was identified as a means of strengthening their position vis a vis the chief constable. Elected every four years it became apparent early on that this election process offered little direct accountability between elections at the precise time that PCCs might be heavily engaged in official appointments, determining crime strategies and liaising with the chief officer on at least a weekly basis.

The problem of 'transparency' of the PCC was to be identified as a potential matter of concern by the Home Affairs Committee in 2014. It argued that there was a need for PCCs to highlight who they were, what they did, what they spent and how they spent it, along with what policies and procedures governed the operation of the OPCC. As the HAC Report noted many concerns remained unresolved and that little information was provided about their work by either the Home Office or the Association of PCCs [HAC 2014:para 28].

A further Report from the Committee on Standards in Public Life into the work of PCCs was to draw attention to what it described as 'evidence of significant standards risks including continuing confusion over roles and responsibilities, insufficient challenge and scrutiny of PCC decisions and insufficient redress where a PCC falls below the standards of behaviour expected of a holder of public office' [Committee on Standards Report 2015].

This problem has been compounded by the fact that as an elective office anyone can stand for election and there is no quality control over candidates and neither is there any skills training on offer to those who might win an election. This may explain the variable nature and quality of PCCs many of whom proved to be 'Independents' in the first PCC

election of 2013. This was to be demonstrated most vividly in the case of the first Labour PCC for South Yorkshire. Here the PCC refused to resign his position in face of public hostility arising from his earlier involvement in council decision making. This surrounded the grooming by members of the ethnic community of young females in Rotherham over a number of years. The lack of accountability between elections has also been compounded by the less than adequate mechanism designed to engage the local community – the Police and Crime Panel.

Police and Crime Panels [PCPs]

Outside of London every PCC area has a local PCP which now provides the sole mechanism to bring the PCC to account between elections. Designed as a means of interrogating PCC decisions in the police force area PCPs were very much an after - thought pushed by the Lib Dem Coalition members on to a reluctant Conservative Policing Minister. In determining that the Panel structure would not be in danger of recreating police authorities in the police force PCPs were to be given very limited powers and few resources.

Recent research has shown that Ministerial decisions here have meant that PCPs other than their deep structural weaknesses demonstrate many characteristics of the old police authorities. It means they are ineffective and very largely unable to undertake the statutory role set for them within the 2011 Police Reform Act [Bailey 2016; 2017; Lister 2014].

As the only formal mechanism available to challenge or question the PCC over policy it might be thought important that the work of the PCP is supported if only because they can channel local public concern to the PCC between elections. For a variety of reasons any expectations relating to PCPs have not and are unlikely to be ever fulfilled. The high turnover of membership, partly due to local political appointees, lack of resources and limited opportunities to engage with the PCC mean that for most PCCs [and chief constables] local police and crime panels remain an irrelevance [Bailey 2017; Watts 2015].

This might suggest that to some degree the Police Reform Act may have only served to solve one problem by replacing it with another. If before the Act the position of the chief constable was viewed in terms of accountability as being highly problematic this issue has now been replicated in terms of the power position enjoyed by the PCC in relation to PCPs between elections.

Developing local Police and Crime Plans

One of the most significant responsibilities which fall to the PCC is that of responding to crime in the force area. In general this responsibility has enabled the PCC to engage with a range of local statutory and voluntary bodies in the force area. In most cases this has involved establishing effective links with local community safety partnerships [CSPs] established under the Crime and Disorder Act 1998 and later legislation. Being responsible for crime and not just policing has served to substantially widen the PCC remit and to extend the PCC role, unlike that of the police authority well beyond a narrow oversight of the police force.

Initially the Labour party was to challenge the value of PCCs and by way of the Steven's Enquiry. This was to present a competing model of police governance based on the creation of regional police forces and regional police boards made responsible for their oversight. This proposal was in the end to be abandoned as many Labour PCCs were to argue that experience of both police authorities and PCCs indicated that the latter were much more effective in driving policy and executive decision making. In a joint publication by Labour PCCs a range of initiatives were to be identified designed to increase police effectiveness. These emanated from OPCCs and which, they claimed, were never likely to have seen light of day within the old police authority world [Fabian Policy Report 2014].

Identifying the significant role given to PCCs in terms of strategic policy formulation one PCC was, within the same report, to outline a method of developing local police and crime plans. As was argued:

'We are required to consult our communities to ascertain what they want from the police and crime plans. These are designed to give a strategic direction to our chief constables and we join the public to scrutinise and evaluate how the plan is being delivered. Our control of the local policing budget ensures what the public wants does happen and represents a significant shift of power towards the public' [Fabian Policy Report :2014].

One function of local police and crime plans can be seen as an additional means of encouraging public participation. This has been supported by innovative use of social media and on-line interaction with the chief officer and PCC on a regular basis [HAC Report 2014]. Elsewhere the PCC has in one force area established an independent panel of residents which reviews complaints files against the police force and publishes reports[HAC 2014:para 61]. In another the PCC has created independent custody visitors who report directly to the PCC on the services delivered by the chief constable and the force [HAC 2014: para 61].

Yet these examples are more than matched by local policing initiatives which subsequently proved to have national ramifications. In Northumbria the evident failure of the police and other agencies to protect young women in the Night Time Economy [NTE] led to a PCC initiative identified as the 'safeguarding programme' for young women made vulnerable within the NTE. The programme has now become a compulsory element of the Security Industry Authority's new entrant course for all door staff [Baird 2016].

In Nottinghamshire the PCC was to commission a report to 'collect personal experiences of policing within the BME community' which constitutes a substantial component of urban Nottingham. As the PCC noted however:

'The report made for uncomfortable reading and was the launch pad for improvements not only increasing transparency of the police use of stop and search but also toughening procedures to ensure every use of these powers was fair , balanced and justified' [Tipping 2016].

One quite dramatic consequence of the PCC report and implementation of change in the local use of stop and search powers by the police has been that Nottinghamshire Police has one of the lowest uses of these powers in the country but now also experiences one of the highest arrest and positive outcome rates. As is argued:

'In 2015-16 the total number of stop and search encounters fell by almost 40% compared to the previous 12 months, while 379 arrests were made as a results of these powers which included 50 arrests for possessing weapons'[Tipping 2016].

The same PCC concluded that scrutiny undertaken by the OPCC had proved to be a key to improvement and where within the police force officers were performance managed to ensure all stops and searches were accurately and lawfully recorded [Tipping 2016].

Elsewhere the use of activity analysis and evidence based research by the OPCC has also proved to have national implications. In Staffordshire a visit made by the PCC to operational police officers indicated that much police time was being taken up by non-criminal incidents. While this feature of police activity is not unusual, the nature of demand had not been fully appreciated. A subsequent review commissioned by the OPCC in 2013 was established to learn how much time officers spent responding to mental health issues in the community.

The review was to reveal that in the previous year police had responded to 15,000 incidents in Staffordshire involving people with mental health issues and that on average at least 20% of their time was taken up with such cases [Staffordshire OPCC Mental

Health Review: 2013] . The Ethics, Transparency and Audit Panel set up by the same OPCC was later requested to report on how a seriously ill man spent 64 hours in police custody despite not committing a crime, because suitable NHS services were not available.

The subsequent report found that the incident was to involve 22 police officers over a long weekend and that despite the best efforts of the police the 'man's condition deteriorated while in custody'. The report concluded that police officers were left to deal with mental health cases 'on a scale which was outside of their expertise' [OPCC Staffs 2016]. The evidence from Staffordshire proved to be highly influential and has subsequently helped drive national policy in this complex and highly challenging area.

As these examples suggest the PCC experience has to date proved to be innovative and for the first time has provided a new platform for positive intervention to improve police effectiveness. This feature of the new governance has in fact been recognised by the Home Affairs Committee which in a recent report was to comment that:

'One clear message from our evidence is that PCCs have provided greater clarity of leadership for policing within their areas and are increasingly recognised by the public as accountable for the strategic direction of their police force' [HAC 2014: para 56].

Operational Independence

Given the wide powers accredited to the PCC and the role provided in developing the local police and crime plan there must be some potential danger that the PCC, in fulfilling these responsibilities, could stray into areas defined as police 'operational' matters. This traditionally has been seen as a major element in protecting the police from any political interference. This matter has however been complicated over time as the police service has used ever wider definitions of what constitutes 'operational' and which as a result precluded any independent assessment or effective oversight.

This feature of non-intervention was to encourage a greater degree of local police autonomy. It may also have encouraged a potential [and real] danger of encouraging professional concealment where the ever wider discretion accorded chief officers could support clandestine behaviour among operational officers on the ground as in South Yorkshire. In the world of the police authority it was always unlikely that elected officials would seek to challenge this convention and if they did then they would be quickly rebuffed by chief officers [Brogden: 1982; Reiner: 2000:189].

Indeed the tragedy which surrounded the Hillsborough Inquiry could be seen in retrospect as a logical outcome to this overly defensive protection of constabulary

independence. Here after many years of confusion and contradictory claims as to the nature of events at the Hillsborough football stadium an independent enquiry was to discover a major police exercise in misinformation and disinformation which was to be initiated and overseen by the chief constable. In requiring all officers who attended the stadium that day to rewrite their notebooks to ensure that any failures or mistakes by South Yorkshire Police were exorcised, the chief constable ensured that blame for the disaster identified by the popular press would continue fall, not on his officers, but on Liverpool football supporters [Loveday : 2012]. Twenty six years later the reverberations of this decision continued to be evidenced in the dismissal by the PCC in 2016, of the then chief constable. There is, unsurprisingly, no evidence that the police authority either at the time or later, sought to challenge the chief constable on this matter.

The Hillsborough tragedy and subsequent enquiry may however serve to provide a platform upon which to re-address the issue of police operational independence. As a convention the whole doctrine of police independence has a questionable pedigree in law and was to be forensically analysed by Marshall who challenged both the basic assumptions surrounding the doctrine and also its legal status [Marshall 1965; Marshall and Loveday1994].

Thus while the Policing Protocol Order 2011 states that PCCs 'must not fetter the operational independence of the police force and the chief constable that leads it' recent developments suggest that a more pro-active stance, if adopted by the PCC, would be of some value. It might also prove to be of greater benefit than the current retrospective accountability powers exercised by the PCC particularly where operational decisions made by chief officers have proved to be either potentially misguided or evident failures. Some interesting examples of these have been highlighted in recent years.

Operation Midland MPS

In the MPS the former Commissioner, Sir Bernard Hogan- Howe, was to help initiate and thereafter support Operation Midland an investigation into the claims of one assumed victim of sexual offences committed by a number of high profile politicians along with the former chief of general staff Lord Bramall. Deeming the evidence of one self –proclaimed victim as 'credible' senior officers were to pursue the Midland enquiry through to its 'ignominious and expensive collapse' [The Times 2017].

Later the 'victim' was to be revealed as a known fantasist who may also have been encouraged in making claims of sexual abuse by the use of psychotherapy. The Commissioner, despite this, proved adamant in refusing to apologise to those who ended up being the real victims of the investigation. In what might be viewed as a highly

critical assessment of his period as Commissioner, an editorial in The Times was later to conclude that:

'He had defended the indefensible until such defence was no longer tenable, withheld apologies from those owed them until such withholding became scandalous and then apologised grudgingly. He has spoken the language of transparency while practicing opacity .He has encouraged among his officers something of a return to secrecy and unaccountable arrogance. His PR has been self- serving and has indicated a departure from the purest ideas of public service' [The Times February 2017].

Here, it might be thought, was evident grounds for intervention by the London Mayor, the elected authority to whom the Commissioner was ostensibly accountable. There is little evidence of any attempt to interrogate the Commissioner's actions by the then Mayor Boris Johnson even though there was clearly sufficient grounds for much greater 'intrusive oversight'. Ultimately it proved to be the incoming mayor Sadiq Kahn who exercised his powers in deciding to refuse to extend the Commissioners contract.

Operation Conifer Wiltshire

Nor has the MPS proved to be the only example of what in retrospect can be only viewed as questionable grounds for a major investigation and which also raised concerns as to the professional competence of chief officers involved. In Wiltshire Operation Conifer has demonstrated once again a readiness on the part of the police to initiate an investigation based on the questionable allegations of victims of historic sex abuse. The Conifer investigation has been directed against the former Prime Minister Sir Edward Heath. Interestingly the senior officer in charge was to initiate the investigation outside of the former home of the chief suspect. This was to receive, not perhaps surprisingly, considerable media coverage and raised some doubt as to the impartiality of the police investigation itself.

Despite the conclusions of an independent adviser that in this case as in others, the police should immediately close down any investigations based on the 'pernicious fallacy' of claims of ritual abuse particularly where witnesses had been enabled by a psychotherapist 'to recall their past' [Booth 2016] the police inquiry was to continue. Later in a Parliamentary Debate on Operation Conifer Lord Armstrong was to state that:

'Having served in the Home Office for four years I understand about the operational independence of the police but this matter has gone beyond operational matters; it has become a matter of confidence in the police and the police duty of investigating allegations and following up evidence and has pronounced a verdict of guilty on the late

Sir Edward Heath in respect of child abuse even before the chief constable's enquiry is complete' [Hansard Online 2017 Vol 779].

In responding to a question raised in the same debate as to whom the chief constable of Wiltshire was accountable the Minister of State for the Home Office was to state that it was for the PCC to make the decision to appoint suspend or to remove a chief constable but that the PCC might compel a chief constable to resign or retire under Section 38[3] of the Police Reform and Social Responsibility Act 2011.

This might suggest that the PCC may intervene if in the opinion of the Commissioner, there appears to be sufficient grounds to do so. However in exercising this power the PCC must do so reasonably, fairly and after consulting both the chief constable and the local police and crime panel. Under the Police Reform Act much will now, therefore, depend on the evidence, perception and attitude of the PCC. There was to be no intervention by the Wiltshire PCC and Operation Conifer was to be completed in October 2017 with the publication of a 'Summary Closure Report' by Wiltshire Police [Summary Closure Report Wiltshire Police 2017].

Doubts as to the objectivity of the investigation were however to arise in response to a statement which appeared to originate from Wiltshire police officers who, it was stated, believed '120%' in the allegations of paedophilia made against the former prime minister [Walters 2017]. Other than apparently pre-judging any conclusions arrived at by the very investigation for which they were responsible the officers appeared not to have fully appreciated the findings of an independent advisers brought in to review the inquiry. These had concluded that there was not a shred of evidence against the former Tory leader and that the claims made against him, including allegations of ritualistic murder, were 'clearly absurd' [[Telegraph 2017].

Indeed there was a growing suspicion that the central allegation of ritual abuse appeared to have in fact originated in a publication entitled 'The Greatest Secret' written some years before in which claims were reportedly made by an unnamed middle aged female source about both Edward Heath and his Chancellor of the Exchequer. In this both were claimed to be, in the early 1970s, involved in ritualistic abuse [Icke 1999:300].

Involving a team of seven officers, eleven police staff and headed by a chief superintendent the Conifer inquiry has, since it was established in 2015 been estimated to have cost around £1.5 million [Mendrick and Evans 2017]. The chief constable who defended the inquiry by reference to his operational independence was in the course of the investigation to state that a significant number of individuals had alleged abuse but refused to say how many or provide details of the only two people to be arrested [and

subsequently released from police custody]. In October a Report on Operation Conifer was to be made public which detailed a number of alleged offences 'where if still alive, Sir Edward Heath would have been interviewed under caution'. Of these the most significant alleged offence proved to be 'rape of a male under the age of 16, contrary to Section 1 of the Sexual Offences Act 1956'. [Summary Closure Report, 2017:9.15]. Subsequently it was to be discovered that this, the most serious allegation, [Summary Closure Report 2017:9.15] had been brought by a jailed paedophile offender serving a lengthy sentence for child abuse. It was also learned that his claim of rape in fact been investigated much earlier and dropped by the Metropolitan Police in 2015 [Mendick and Evans 2017]. Siblings of the alleged victim were to state, later, that they had no recollection of their brother being abducted and then raped by Sir Edward Heath as he subsequently claimed. Wiltshire Police had however failed to interview any of the relations about the rape allegation [Mendrick 2017].

PCC powers of intervention

The examples of police investigations identified above might suggest that on occasion it would be appropriate for the PCC to intervene. Yet one problem remains. There appears to be no action other than that of suspension or dismissal that a PCC can currently exercise when confronted with 'operational policing' that, as in the examples examined earlier appear to go beyond the rational and to enter the realm of the absurd. In the light of recent experience of police operational independence there must be some concern that in protecting the police from one form of potential abuse this may only serve to foster another.

Recently the Home Affairs Committee has argued forcibly for PCCs to guard against the inherent risks of the new governance model by avoiding any temptation to interfere in the operational independence of chief constables [HAC 2014:para67]. It has also expressed concern about the lack of clarity surrounding any decision made by the PCC to call upon a chief constable to resign or retire.

Following the South Yorkshire PCC's recent decision to exercise that power in relation to his own chief constable this has recently been tested in the High Court. This followed on from an appeal made by the former chief constable contesting the decision of the PCC to dismiss him in April 2016. In the event the Court was to find in favour of the appellant and against the PCC for South Yorkshire. In doing so it clearly sought to narrow the ground upon which a PCC could initiate a dismissal procedure under section 38 of the Police reform and Social Responsibility Act 2011 [Muir 2017].

Concluding that the PCC had acted 'irrationally' in regard to his decision to suspend the chief constable the court found that the PCC had also paid insufficient regard to the views expressed about the case by HMCIC [QBD para 145:2017. The PCC had, the court stated, failed to engage with the substance of much of the HMCIC's observations and 'failed to provide cogent reasons for taking a different view' [R-v-PCC South Yorkshire QBD para 159:160 2017]. This was to lead the Court to declare the decision by the PCC to proceed with the dismissal as also being 'irrational' on the part of the PCC..

Limiting the discretion exercised by the PCC in relation to suspension or dismissal procedures under Section 38 of the Act would appear to be the primary outcome of this case and there is no suggestion of reinstating the chief constable. However the same judgement was to highlight the fact that the PCC was not just entitled but 'obliged to hold the relevant chief constable to account in respect of all the functions of the chief constable and for all the functions of those acting under his direction and control' [R-v-PCC South Yorkshire QBD Para 76:2017].

As has been noted most recently by Muir, the tension which exists between the conflicting principles of operational independence and democratic oversight and accountability continues to pertain [Muir 2017]. Yet the judgement of the court has in fact also served to significantly clarify the position of the PCC in relation to police operations. As the court has declared, while the Policing Protocol recognises the operational independence of the Chief Constable the Act clearly undermines both the status and meaning of the Protocol. As has been found by the court:

'The PCC is obliged to hold the chief constable to account for every function he performs. In our judgement matters relevant to operational independence are not excluded from the scope of the PCCs power of scrutiny. The operational independence at common law [See notably Commissioner of the Metropolis ex parte Blackburn [1968 2QB 118 at 135] must give way if so required by the terms of the 2011 Act and in our judgement the Act qualifies that common law rule' [R-v- PCC S Yorkshire QBD Para78:2017].

The judgement also states that the Policing Protocol provides a more 'nuanced approach' than the common law, to both the importance of operational independence and the competing imperative of democratic oversight of the police. It concludes however that:

'It is in our judgement impossible to see operational independence as being beyond the supervision of the PCC' [R -v- PCC South Yorkshire QBD Para 79:2017].

The judgement might be construed as a significant challenge to the doctrine of police independence from both central and local control espoused by the police service. This found legal expression originally within the Fisher –V- Oldham Corporation case of 1930 where it was found that the police should perform their duties as constables wholly independently of the watch committee and upon which the Blackburn dicta was to later based [Marshall and Loveday 296:298:1994]. This judgement can be expected to be subject to yet further scrutiny by the Courts. It does however provide the first significant breach in the traditional police defence of their operational independence.

Conclusion

The powers exercised by PCCs in relation to the chief constable may now be the subject of further scrutiny by the Courts. It remains the case that the Police Reform and Social Responsibility Act 2011 has provided a dramatic departure from the tripartite model established by the 1964 Police Act. The commitment to local service delivery has been made manifest in providing a new framework for police governance which begins to rebalance the relationship between police and local government.

The reality of police autonomy experienced in the past has been basically challenged by a Conservative government that remains committed to new localism and to ending central direction and oversight of the police service. In doing so it presents a remarkable contrast to the direction taken in Scotland where a national police system, Police Scotland, was to be introduced in 2013 [Fyfe N and Scott K B 2013]. The many problems that have attended this development suggest that a local rather than national police service is likely to be more responsive and accountable to local communities particularly where coterminous boundaries are established between local authorities and police forces [Loveday 2015].

There are however many issues which need to be addressed within the PCC model. Of these the most significant is the limited oversight currently exercised by local police and crime panels [PCPs]. Recent research has demonstrated the severe limitations placed on PCPs and means that much of the business conducted by the OPCC is not subject to effective review. This would include all appointments made by the PCC to the OPCC and much of the decision making which takes place within that office [Bailey 2017].

It is also evident that candidates for the office of PCC can be of a variable quality. Additionally the criteria adopted for internal appointments may leave much to be desired [Loveday Lewis et al 2015; Ludwig et al 2017] . In its 2015 Report the Committee on Standards in Public Life was to draw attention to there being insufficient challenge and scrutiny of PCCs decisions and that these were ‘insufficient redress where a PCC fell

below the standards of behaviour that the public expects of a holder of public office' [Committee on Standards Report 2015:5]. Not surprisingly the Committee on Standards was to highlight the weaknesses of Police and Crime Panels which now represent both the sole means of bringing PCCs to account between elections and encouraging greater transparency of PCCs decision making [Committee on Standards Report 2017:Para 3.92].

Further concerns relate to the selection and appointment of chief constables. It is becoming increasingly apparent that selection is now largely in house at chief constable level and based on internal promotion rather than outside appointment [Watts 2018 forthcoming]. Nor is it clear as to what criteria may be applied in relation to their selection. This now remains the exclusive responsibility of the PCC and the OPCC. This too raises questions about selection criteria adopted by the PCC for Deputy PCC appointments. As a recent case involving the selection of a deputy PCC for Cambridgeshire and Peterborough has demonstrated 'due diligence' supposedly undertaken by the OPCC may not always precede selection [Evans 2017].

These issues, while significant, are not beyond rectification. It would be entirely appropriate for parliament to revisit the role of local police and crime panels with a view to enhancing their powers and providing them with sufficient resources to enable the PCP to undertake an effective scrutiny of the PCC. It may also be of value to encourage HMCI to engage with local PCCs in decisions surrounding the future selection of the Chief Constable.

This might be of value particularly at a time when the current Home Secretary is openly canvassing for civilian personnel to compete with senior police officers for each of the 43 chief constable positions in England and Wales [Hamilton 2017]. The re-introduction of a local model of policing in England and Wales has many advantages but also generates potential risk. This might be best managed by a continued commitment to openness and transparency within police governance along with effective checks and balances. This has been succinctly argued most recently by the Committee on Standards in Public Life in its recent report on leadership, ethics and accountability in policing. There is much to suggest that this will be of immediate value to the new police governance structure and process in England and Wales.

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