

Devon and Cornwall Police Authority Corporate Governance Committee  
17 November 2009  
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Report of the Acting Chief Executive

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## Draft Agreement for the establishment of a Joint Committee for collaboration in Policing for the South West of England

### Recommendation(s):

- (i) The Corporate Governance Committee note the report,
- (ii) That the Committee makes recommendation to the Police Authority as to the suitability to Devon and Cornwall Police Authority of the governance arrangements as set out in the Draft Agreement for the establishment of a Joint Committee for collaboration in Policing for the South West of England.

### Introduction / Summary

1. This report seeks to update Members on the latest developments regarding the draft Joint Committee collaboration agreement and to offer the opportunity for the Committee to discuss the governance aspects of the proposal.
2. It may be beneficial first to explain from where the draft agreement originates and why the region is looking to progress such an initiative.

### Background

3. In 2005, the then Home Secretary Charles Clarke asked all police forces in England and Wales to develop proposals on how they could work more successfully in tackling serious and organised crime by amalgamating with other forces. This followed a nationwide review by Her Majesty's Inspectorate of Constabulary (HMIC) which found that police forces across the country generally lacked sufficient resilience to cope with some significant operational challenges.
4. The Government eventually shelved their merger plans in mid 2006 and instead called for police forces and authorities to seek other ways in which to collaborate or 'strategically co-operate' to bring about greater efficiency and effectiveness.
5. This provided the impetus for the five police forces and authorities comprising the south west region of England (Avon & Somerset, Devon & Cornwall, Dorset, Gloucestershire and Wiltshire) to meet regularly to explore opportunities by working more closely together and progress joint working arrangements.
6. This is currently facilitated through 'Chiefs and Chairs' meetings, whereby the Chief Constable and Chairman, supported by their Chief Executive, of each force/ authority meet to discuss opportunities.
7. Police Authority Members have been kept updated on the output from these meetings and on collaboration matters generally (Police Authority meetings in April and September and Police Authority Seminars in January and October).

8. It is reasonable to say that earlier this year, the regional collaboration work had lost some momentum. It was agreed that it would be necessary to bring the Chiefs and Chairs together again to redefine the purpose of regional collaboration and set out a clear plan for delivery. This was made all the more urgent given the financial pressures all forces/ authorities would be facing in the very near future.
9. In June this year, the Chairs and Chiefs held a 'visioning day' with the aim of re-focussing the collaborative effort of the five forces and authorities into seeking greater efficiencies and effectiveness for the communities they serve.
10. The 'visioning day' resulted in a number of key outputs. These were:
  - A clear commitment by all five police forces and authorities to bring a renewed vigour to regional collaboration by being more radical and recognising that change was imperative.
  - For this to be demonstrated through the development of a Vision for collaborative working agreed by all five authorities and forces.
  - For a chapter on regional collaboration, common to all forces/ authorities, to be included in the five local policing plans for 2010.
  - For a senior police officer, probably of deputy chief constable rank, to be appointed jointly by the five authorities to work solely as Senior Responsible Owner (SRO) for the regional collaboration programme.
  - To primarily focus on the two areas of corporate services and protective services as those requiring the most urgent need for attention, regionally.
  - Importantly, to help all of the above to work more smoothly, for the region to consider the constitutional aspects of collaborative work by exploring the possibility of establishing a South West Policing Board. This would make recommendations to a Police Authorities' Joint Committee with regional decision-making powers. The proposal would spell a significant change in the decision-making process for the Police Authority by permitting certain important and wide-ranging decisions to be delegated to a number of Members of the Authority on its behalf and in the interest of regional collaboration.
11. There was a general acceptance from Chiefs and Chairs that Members need to be kept informed and make the decisions they need to make in order to discharge their duties in law. However, this had to be discharged whilst not hindering collaboration projects through unnecessary bureaucracy and the need to refer back to five police authorities where the strategic decisions have already been taken.
12. The law states that, as a local authority under the Local Government Act, a police authority cannot currently delegate its legal duties and functions to another police authority (or force). However, authorities can delegate their duties to a statutory joint committee made under sections 101 -102 of the Local Government Act 1972.

#### **Earlier discussions on the principles of a Joint Committee Agreement**

13. The work of preparing a Joint Committee Agreement was tasked to the Chief Executive of Wiltshire Police Authority. The first draft of that agreement was considered by the Chairs Committee on 4 September 2009 as within the Police Authority's Constitution, the Chairs' Committee holds the delegated authority to consider issues relating to regional collaboration.

14. Prior to the Chairs' Committee on 4 September, the Deputy Chief Constable had tasked the Force's Director of Legal Services to review the draft Agreement and give opinion as to whether it conflicts with Devon and Cornwall Constabulary's or Devon and Cornwall Police Authority's own local strategies and, in particular, the Core Delivery Programme. In doing this, the Director of Legal Services had been in consultation with the report's author to clarify certain points.
15. The Director of Legal Services confirmed to the Chairs Committee that the document was largely sound and did not conflict with either the Force's or Authority's interests. However there were specific elements within the draft agreement that required further explanation and clarity.
16. Lengthy discussions took place amongst the Chairs' Committee members, particularly in regard to the principle that the agreement, if it were ratified, would legally devolve decision-making for certain aspects of regional collaboration agreements to two Members on behalf of the Devon and Cornwall Police Authority. Similar discussions took place in relation to other key clauses in the draft Agreement, specifically the possibility to opt-out of certain elements and projects and responsibilities around funding/ costs.
17. After some detailed discussion, it became clear that time did not allow for the Chairs' Committee to debate each element of the agreement clause by clause. Instead, the Chairman proposed that the Treasurer and the Director of Legal Services meet to clarify certain points in the agreement and if necessary undertake further discussions with the agreement's author.
18. The Chair's Committee resolved to accept the Agreement in principle subject to certain issues being further explored with the Chief Executive of Wiltshire Police Authority. It was also agreed that, assuming these further discussions concluded satisfactorily, a short report (not the actual draft Agreement) be presented to the Police Authority on 18 September 2009 recommending that the Authority sign up to the Agreement.
19. The Police Authority was presented with the Chairs' Committee's recommendations on 18 September 2009. These were:
  - i. That the Police Authority agrees in principle to the Joint Committee Agreement subject to some issues being clarified.
  - ii. That subject to the final drafting of the Agreement concluding satisfactorily, that the Authority signs up to the Agreement.
  - iii. That delegated authority is granted to the Chief Executive in consultation with the Chairman to sign the Agreement on behalf of Devon and Cornwall Police Authority.
20. The Police Authority debated the Joint agreement in some detail. Whilst the minutes of this meeting are yet to be formally approved, there was disappointment that the issue had not been referred to the wider membership, and in particular, the Corporate Governance Committee for consideration.
21. In particular, there was some apprehension amongst the membership regarding the implications the agreement would have for the Authority's governance arrangements within the proposal to delegate to two Members, decision-making authority on specific collaborative agreements. There were suggestions at the Police Authority that in all cases where there was sufficient time to refer the decision to the whole Authority, this should be done. Where it was not possible to consult the Authority, clarity was requested about appropriate mechanisms being put in place to overcome those concerns.

22. Whilst a formal resolution was not passed, the objective and principle of a joint committee for decision making was generally accepted. The Corporate Governance Committee was asked to consider the draft Agreement in terms of its constitutional aspects and make recommendations to the Police Authority meeting in December.
23. On 23 October 2009, Members of the Chairs Committee again discussed certain principles of the Agreement. In particular, what would be Devon and Cornwall's position in terms of signing-up to the Agreement should one (or more) of the other Authorities decided not to sign?

#### The draft Joint Committee Agreement

24. The latest version of the draft Joint Committee Agreement is attached at **Annex A**. This has undergone a number of revisions following consultation with authorities and force legal professionals.
25. There are a number of governance aspects that are important for this Committee to consider.
  - i. The Agreement would establish a South West Policing Board (The Board) and a Police Authorities' Joint Committee (PAJC). Essentially the Board will draft a South West Annual Business Plan which will set out a targeted and specific programme of collaborative work. This will then be submitted to the PAJC for consideration and amendment. It will then be considered by each of the police authorities and once agreed by all five the draft plan will be considered officially approved.

Clauses 5.5 and 7.4 of the Agreement allow an Authority to "opt out" in relation to any particular matter that is going into the Plan. However, in consultations between the Police Authority Treasurer, the Force Director of Legal Services and the Acting Chief Executive it was suggested that there should also be an ability to opt out of any initiative which is included within the Plan when the precise detail of the obligations and liabilities arising as a result of that initiative become apparent. This will likely be when the business cases are submitted prior to entering into the Section 23 Agreement<sup>1</sup>. Accordingly it was felt that it was necessary for the exact points at which a party can opt out to be made clear so that a party can opt out at both the stage when the plan is approved and also prior to entering into a Section 23 Agreement.

It is argued by the author that clause 7.2 which has recently been amended to take account of these discussions, provides adequate provision for an assessment for the obligations and liabilities to be understood and that it potentially goes against the spirit of the agreement to add extra clauses which provide additional disengagement options.

In addition, clause 7.5 allows individual police authorities to be consulted on any amendments to the 'approved' Plan prior to that amendment being incorporated.

- ii. The Agreement suggests (at Clause 5.2) that the PAJC membership comprises two representatives from each Authority who will have delegated authority to bind their parent Authorities (clause 5.4) into this programme of work, subject to the 'opt-out' provision.

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<sup>1</sup> Section 23 (1) of the Police Act 1996 permits Chief Constables to agree to discharge police functions jointly provided that approval is given by the Police Authorities involved.

Section 23 (2) permits Police Authorities to provide premises or equipment for joint working and Section 23 (7) confirms that Police Authorities may themselves engage in joint working.

Earlier drafts of the Agreement suggested that the two members would be the Chairman and Vice Chairman of the Police Authority. However, this version of the Agreement is less prescriptive.

- iii. Clause 5.7 explains how voting arrangements will operate. It is clear from this clause that majority voting will only stand for proposals with a detailed business case, included in the South West Annual Business Plan, and where such proposals have been approved by the relevant full Police Authority without reservation.

#### **Internal control mechanisms**

26. One of the reasons for the Joint Committee proposal is to speed up decision-making for collaborative working arrangements. Whilst it is necessary to build in suitable safeguards, the spirit of the Agreement is to make collaborative working more effective by making the governance arrangements slicker than they have been.
27. It is clear from the Agreement that, whilst delegated authority will be provided to two Members to act on behalf of the Police Authority, each individual police authority will be consulted separately wherever possible.
28. To assist the Police Authority in exercising this role, it may be desirable for a principles framework to be agreed within which the two Members operating with delegated Authority must work. Suggestions for such principles may be:
  - The Authority is mindful of its duty to provide support for policing priorities outside of its own force area. However, the first priority of the Authority will be to policing within the counties of Devon and Cornwall, and the Isles of Scilly.
  - Wherever possible, Devon and Cornwall Police Authority will be fully consulted prior to any decision being taken by the PAJC.
  - That where it is not possible to consult with the full Membership of the Police Authority, the Authority may instigate Urgency procedures to reach a decision, as set out in the Police Authority's Constitution.
  - Any collaboration must bring financial or operational benefits, clearly expressed at the outset either through the direct project itself or because it facilitates other collaborative ventures.
  - That the Police Authority be regularly updated on the work of the Joint Committee and, if necessary, call for reports on its activity.

#### **Conclusion**

29. The Draft Joint Committee Agreement is presented for the consideration of the Corporate Governance Committee. The Committee is asked to review the contents of the draft Agreement and this covering report and make recommendation to the Police Authority on 11 December 2009 as to the Committee's satisfaction, or otherwise, with the governance safeguards contained herein.

#### **Contact: for further information**

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