

## Lincolnshire Police and Crime Panel

**Date:** 30/11/2023

**Subject:** Lincolnshire Chief Constable aborted recruitment exercise and the IOPC's Operation Motala Executive Summary Report

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### Summary:

The IOPC recently published a report summarising an IOPC investigation (Operation Motala) into an allegation that the Lincolnshire Police and Crime Commissioner (PCC) sought to manipulate a Chief Constable selection process. The report includes the IOPC decision maker's rationale for not referring the PCC's actions to the Director of Public Prosecutions.

This report sets out the background which led to the IOPC's investigation, the IOPC's published investigation report and makes recommendations for the Panel's consideration.

### This report was prepared after consultation with:

The Chairman and Vice Chairman of the LPCP  
The Monitoring Officer for the LPCP  
The Legal Manager, ELDC  
Independent Legal Advisor

### List of background papers as required by law:

College of Policing Guidance for appointing Chief Officers 2018

**Is the report Exempt:** No

## Report

### Chief Constable Recruitment Process

- 1.1 In June 2020, Lincolnshire Police's Chief Constable Bill Skelly announced his intention to retire from the Force.
- 1.2 Section 38 of the Police Reform and Social Responsibility Act 2011 (The 2011 Act) provides that the Police and Crime Commissioner (PCC) is responsible for appointing the Chief Constable for their police force area.

Accordingly the Office of the PCC (OPCC) for Lincolnshire commenced a recruitment process for Mr Skelly's replacement.

- 1.3 Candidates were shortlisted in August 2020 and took part in a two-day selection process on 2 and 3 September 2020.
- 1.4 Schedule 8 of the 2011 Act sets out that a confirmation process must be completed before a Chief Constable can be appointed. The statutory requirements of the process include:
  - the PCC formally notifies the Police and Crime Panel (PCP) of the proposed Chief Constable appointment and provides specific information in relation to the individual and the appointment.
  - the PCP reviews the proposed appointment within three weeks of receiving the formal notification and required information.
  - the PCP holds a public confirmation hearing to question the candidate.
  - the PCP publishes a report to the PCC on the proposed appointment and this must include a recommendation as to whether the individual should be appointed and may include exercising the power of veto (a decision to veto is required to be agreed by two-thirds of the PCP members).

A Confirmation Hearing for Mr Skelly's replacement was provisional scheduled for 17 September 2023 to enable the PCP to fulfil these obligations.

- 1.5 On 8 September 2023 the PCP was formally advised that a further assessment day for the candidates would take place on 10 September 2023. Due to this addition to the process it was agreed to reschedule the Confirmation Hearing to a later date to provide sufficient time for documentation to be prepared by the OPCC for the Hearing and for this to be considered by the PCP in advance of the Hearing (in accordance with local government meeting notice requirements).
- 1.6 On 12 September 2023 the PCC publicly announced his preferred candidate for the role.
- 1.7 The 2011 Act requires that when notifying the PCP of a candidate for appointment as Chief Constable, a PCC must provide the PCP with the following information:
  - the name of the proposed candidate.
  - the criteria that were used to assess the suitability of the candidate.
  - how the candidate has satisfied those criteria; and

- the terms and conditions on which the candidate is to be appointed.

The above information was never received by the PCP.

- 1.8 On 17 September 2020, the Independent Member (IM) submitted their report to the PCC. The role of the Independent Member in the Chief Constable recruitment process is set out in Home Office Circular 013/2018 and is to ensure the selection and appointment process is conducted fairly and openly, and the successful candidate is selected on merit.
- 1.9 Whilst the IM is appointed by the PCC it is established national best practice (College of Policing Guidance for appointing Chief Officers) that the IM report is submitted to the PCP to provide assurance that the selection and appointment process has been conducted in accordance with the three principles of merit, fairness and openness.

**Merit** “means appointing the best available person judged against the essential criteria for the role. No-one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best. The successful candidate should also be chosen from a sufficiently strong and diverse pool of eligible applicants”.

**Fairness** “means there must be no bias in assessing candidates. Selection Process must be objective, impartial and applied consistently.”

**Openness** “means that job opportunities must be advertised publicly. The aim of the advertisement should be to attract a strong field of eligible applicants. Potential candidates must be given reasonable access to information about the job, its requirements and the selection process. It opens competition, anyone who wishes must be allowed to apply”.

- 1.10 The IM report was subsequently forwarded to the PCP on 22 September 2020. The report stated that, because the PCC had recommended an applicant who had not met the agreed standard during the original two-day selection process, the process had not been conducted in accordance with the principles of merit, fairness and openness.
- 1.11 On 25 September 2020, the PCC offered to meet with the PCP privately ahead of the confirmation hearing, ‘to offer context on the process and the Independent Member’s report’. He also asked the PCP to confirm that the Independent Member’s report would not be discussed in public at the hearing, as it contained information which was potentially damaging to the candidates.
- 1.12 The PCP Monitoring Officer (MO) replied that a private meeting would not be appropriate, and that a decision about the Independent Member’s

report could not be confirmed until all relevant documentation from the OPCC had been received. The MO confirmed that the decision would need to balance the public interest of disclosure against 'the personal data impact on the candidates'.

- 1.13 On 30 September 2020 the Panel received formal notification that the PCC had decided to restart the recruitment and selection process for a new Chief Constable.
- 1.14 On 2 October 2020, the PCC publicly announced that he had decided to terminate the selection process on the grounds that 'protecting the identity and integrity of individuals who put themselves through this intensive process overrode the need to complete'.

#### PCP Scrutiny and Referral to IOPC

- 1.15 Following the decision of the PCC to restart the Chief Constable recruitment process the PCP instigated a fact-finding scrutiny exercise to better understand the PCC's actions and decisions surrounding the aborted recruitment process.
- 1.16 This fact-finding exercise led to a detailed report being submitted to the PCP for consideration as to whether a formal referral should be made to the IOPC in relation to a conduct matter, namely Misconduct in Public Office. In this context conduct matters are defined in legislation as where there is an indication (whether from the circumstances or otherwise) that the relevant office holder (i.e. the PCC) may have committed a criminal offence.
- 1.17 Where a PCP determines there is an indication of a conduct matter it must record a conduct matter and refer the matter to the IOPC.
- 1.18 The PCP determined a referral should be made to the IOPC. Throughout this time, the PCP and the Monitoring Officer were supported in the provision of independent expert legal advice.

#### IOPC Investigation, Decision and Report

- 1.19 The IOPC decided that the referral from the PCP was valid and required investigation. The IOPC also directed the Panel to record a broader range of conduct matters and to refer them back to the IOPC for its consideration.
- 1.20 On completion of a thorough and independent investigation the IOPC's Regional Director publicly announced in December 2022 that the evidence

gathered during the investigation did not indicate that a criminal offence may have been committed and that the IOPC would seek representations on the publication of its investigation report.

- 1.21 On 9 November 2023 the IOPC published an Executive Summary of its investigation into an allegation that the PCC sought to manipulate a Chief Constable selection process. The report includes a summary of IOPC decision maker's rationale for not referring the PCC's actions to the Director of Public Prosecutions. The report is attached at Appendix A for the PCP's consideration.
- 1.22 Following publication of the IOPC report the Panel notified parties, including the PCC, who took part in its scrutiny exercise, and requested comments regarding the IOPC report. A copy of the PCC's response which highlights passages from the IOPC report is attached at **Appendix B** for the Panel's consideration.
- 1.23 Other parties that were notified by the Panel raised the following matters in their responses which are summarised below:
  - Merit, fairness and openness issues in the decision-making process and compliance with College of Policing guidance.
  - Ethics and standards concerns with reference to the Nolan Principles.
  - Public confidence in the process.
  - Gratitude for the Panel's scrutiny into the process and the IOPC's investigation.

#### Considerations for the PCP

- 1.24 Under the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012, the IOPC can only investigate criminal allegations against PCCs. The IOPC does not have the power to investigate allegations of misconduct by PCCs.
- 1.25 Whilst the IOPC report concludes that the threshold to refer a criminal matter to the CPS had not been met the report highlighted:
  - that the PCC did not always adhere to the guiding principles of fairness, openness and merit at all times during the process, and moreover, at times, his decisions were directly in conflict with these principles.

- the unorthodox decision to introduce an additional element had a negative impact on many of the parties involved in the process, and potentially contravened the principles of merit, fairness and openness.
  - in conclusion, based on the evidence obtained during this investigation, the decision maker agreed that the PCC may not have been completely open or sufficiently clear in some of his dealings with the appointment panel members, Chief Constable Cole, the three candidates, third parties he approached for advice, and the PCP.
- 1.26 The IOPC felt that the above matters were more appropriate to be considered by the PCP, as part of their review and scrutiny role, rather than by a criminal court.

Principles of merit, fairness and openness

- 1.27 The Home Office Circular 013/2018 confirms that:
- "Those responsible for the selection and appointment of chief officers must observe the three principles of merit, fairness and openness."*
- 1.28 The appointment of a Chief Constable is one of a PCC's most important duties, and the appointment can have significant and far-reaching implications both for the force, and for the public it serves. The public must be able to have confidence that Chief Constable selection processes are open, fair and merit based.
- 1.29 The IOPC report details that these principles were not observed throughout the process. Furthermore the additional part of the process did not follow the College of Policing guidance for appointing Chief Officers.
- 1.30 The Panel is invited to seek assurance from the PCC, that the forthcoming Chief Constable recruitment process will follow the principles of merit, fairness and openness and will be undertaken in accordance with the College of Policing guidance for appointing Chief Officers.
- 1.31 The Panel may also wish to recommend to the College of Policing that it reviews its guidance for appointing Chief Officers and considers if it is adequate in underpinning the legislative position.

## Involvement of His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) in future processes

1.32 Through the State of Policing: Annual Assessment of Policing in England and Wales 2022 the HM Chief Inspector of Constabulary considered the role of the Inspectorate in the Appointment of Chief Constables. The Annual Report detailed:

- *The Inspectors of Constabulary, through their continuous assessment of forces, have far more extensive, independent knowledge and insight of both the quality of the force and its senior people than anyone else.*
- *There should be a requirement for PCCs to consult the Chief Inspector of Constabulary before the appointment or reappointment of a chief constable, commissioner or deputy commissioner. The chief inspector should provide the Home Secretary with their assessment of the suitability of the process and candidate before the appointment takes place.*
- *Recommendation - By 31 December 2023, the Home Secretary should re-establish the involvement of the Inspectors of Constabulary in the selection and appointment of police chief officers and determine whether legislative changes should be introduced to Parliament.*

(The above report can be found via the following link-

<https://hmicfrs.justiceinspectrates.gov.uk/publication-html/state-of-policing-the-annual-assessment-of-policing-in-england-and-wales-2022/>)

1.33 The Panel is invited to consider whether the involvement of Inspectors from HMICFRS would strengthen the current Chief Constable appointment process and make recommendations accordingly to the Home Office and Home Affairs Select Committee the latter of which is undertaking a 'Police and Crime Commissioner's 10 Years on' inquiry.

### Ethics and Standards matters

1.34 Concern has been raised by parties that the PCC did not adhere to the seven Principles of Public Life, commonly known as the Nolan Principles.

1.35 The IOPC report highlights numerous contradictions between the PCC's account of events and others interviewed during the investigation. Examples include:

- The agreed standard for appointment and scoring process.
- Who introduced the additional element into the process.

- The purpose of the additional element and what outcomes were possible.
- What information was disclosed to Chief Constable Cole prior to additional element.
- The views and support provided by the Chief Police Officers Staff Association (CPOSA) and Mr Cunningham for the additional element.

1.36 The IOPC report (pages 27 and 28) also details critical comments made by the PCC in response to the scrutiny exercise undertaken by the PCP to understand the events surrounding the aborted process and the role Panels in general. These include:

- likely to be limited usefulness and no public interest in the PCP undertaking an ex post facto analysis of the PCC's rationale and decision-making.
- PCPs are, in my experience a costly waste of time and a massive distraction from delivering quality service for the public.

1.37 It should be noted that as detailed earlier in this report the IOPC, an independent body, decided that the referral from the PCP was valid and required investigation. Furthermore a statutory function of the PCP is to review and scrutinise decisions made, or other action taken by the PCC in connection with the discharge of the PCC's functions.

1.38 The Policing Protocol Order 2023 (and the original 2011 version) sets out that PCCs will abide by the Nolan Principles. The PCC's published Code of Conduct sets out clearly the basis on how the Nolan Principles will be followed and upheld by the PCC. It includes the following:

(i) Under the Nolan Principle of Integrity, the PCC has pledged:

"Upon my appointment as Police and Crime Commissioner I pledged to take all steps within my power to ensure transparency of my decisions so that I may be properly held to account by the public".

(ii) Under the Nolan Principle of Accountability, the PCC has pledged.

"I will submit myself to scrutiny by the public, the Police and Crime Panel, Parliament and other appropriate bodies for my decisions and actions."

(iii) Under the Nolan Principle of Openness, the PCC has pledged



"I will be as open as possible about all the decisions and actions that I take, including giving reasons for decisions."

(iv) Under the Nolan Principle of Leadership, the PCC has pledged

"I will promote and support these principles by leadership and example, since as leaders of local policing bodies Police and Crime Commissioners are critical to setting the culture of transparency and ethical behaviour in which the public can have trust across the criminal justice system in their area.

I will:

- treat others with dignity and respect
- not use bullying behaviour or harass any person
- not conduct myself in a manner which could reasonably be regarded as bringing my office into disrepute

I will treat the public with dignity, respect and fairness to increase their confidence in the criminal justice system.

I have agreed to abide by the seven principles of public life known as the Nolan Principles. This Code of Conduct allows transparency in all areas of my work as a Police and Crime Commissioner. These principles encompass my work locally and whilst representing my communities both regionally and nationally".

- 1.39 PCPs are responsible for handling non-criminal complaints about the conduct of PCCs but are explicitly prohibited in legislation from "investigating" such complaints and there are no powers to sanction a PCC. Any such complaint is restricted to being informally resolved between the PCC and the party (encouraging, facilitating or otherwise assisting in, the resolution of the complaint otherwise than by legal proceedings."
- 1.40 The PCC complaints process was subject to a Home Office Consultation in 2015/16 through which the Government proposed to remove the restriction on the PCP's ability to investigate a non-criminal complaint made against the PCC. The proposed changes were not implemented and more recently in 2022 the following recommendation was made under the Home Office's PCC Review Part 2:

*"It is important that the public can complain about their PCC if needed and know that their complaint will be handled effectively and consistently. The Home Office will further consider the processes for how complaints of criminal misconduct are handled, and the scope to align a new code of conduct with the regime for mayors and councillors in local government. This will also consider how to address the problems of vexatious and*

*political motivated complaints, especially those which stem from disagreements with the political views of the Commissioner, or complaints which are nothing to do with policing.”*

A statement from The Secretary of State at the conclusion of the review identified that a recall procedure for PCCs had not been recommended:

*“The public, rightly, expect PCCs to behave appropriately and act with integrity. That is why there is already a high bar in place for PCC conduct. Having explored the options for introducing recall, the Review has not recommended doing so, given the stringent disqualification rules in place for PCCs. I will keep this matter under review.”*

- 1.41 The Panel is invited to consider if it believes the current complaint arrangements for PCCs are fit for purpose and to make associated recommendations to the Home Office, the Home Affairs Select Committee and the Committee on Standards in Public Life on the current powers available to investigate and address non-criminal PCC conduct matters.

#### Impact of Third Parties

- 1.42 The IOPC report details that the decision to introduce an additional element had a negative impact on many of the parties involved in the process. The scrutiny work undertaken by the Panel, also considered what impact there had been on those who had been involved in this process. It was clear that there was considerable concern by several parties on the impact on both their professional and personal lives.
- 1.43 At all times the PCP took steps to maintain the confidentiality of those involved in the process whilst undertaking its statutory duties to review the actions and decisions on the PCC.

## **Recommendations**

1. That the Panel notes the IOPC report, its contents and findings and resolves as follows:
  - I. The Panel is grateful for the lengthy, thorough and independent investigation and welcomes confirmation that its referral to the IOPC was a valid approach in these circumstances, despite at the time, receiving criticism from the PCC for scrutinising events surrounding the Chief Constable recruitment process.
  - II. The Panel particularly notes in relation to the recruitment process that the PCC did not always adhere to the guiding principles of fairness, openness and merit at all times during that process.
  - III. The Panel also notes that at times the PCC's recollection of events to the Investigator contradicted the recollections of others involved in the process as detailed in the report.
  - IV. The Panel notes the considerable impact the process has had on the parties involved.

## Learning recommendations

- A. The Panel seeks assurance from the PCC, that the forthcoming Chief Constable recruitment process will follow the principles of merit, fairness and openness and will be undertaken in accordance with the College of Policing guidance for appointing Chief Officers.
- B. The Panel recommends to the College of Policing that it reviews its guidance for appointing Chief Officers and considers if it is adequate in underpinning the legislative position.
- C. The Panel recommends to the Home Office and Home Affairs Select Committee that they consider the involvement of Inspectors from HMICFRS in the selection and appointment of Chief Constables to strengthen the process.
- D. The Panel recommends to the Home Office, Home Affairs Select Committee and the Committee on Standards in Public Life that they consider a revised standards regime including investigatory powers to tackle issues where a PCC demonstrable falls below the expected standards of behaviour, to address the lacuna in the legislation, bringing scrutiny and accountability in line with that of other elected officials.

E. The Panel delegates to the Democratic Services Manager, in consultation with the Chairman of the PCP to report any agreed recommendations and actions to relevant parties.

**Appendices:**

A – Operation Motala Executive Summary

B – PCC letter to Panel in response to the IOPC report