

Police and Crime Commissioner for Surrey – Decision Making Record

Title: Chief Constable's Terms and Conditions
Decision number: 050/2014
Author and Job Role: Alison Bolton, Chief Executive
Protective Marking: NOT PROTECTIVELY MARKED

Executive Summary:

Soon after taking up office in November 2012, the Police & Crime Commissioner (PCC) agreed to extend the term of appointment of Surrey's Chief Constable, Lynne Owens, by three years until 30th November 2017. At the time of her appointment and again at the point of extension, the Chief Constable was advised that the wider package of benefits offered as part of her role would be reviewed to ensure that it remains fit for purpose and compliant with Police Regulations. This review has now been undertaken with the full and willing cooperation of the Chief Constable.

Current Salary and Package in Surrey

Chief Constables' salaries are set nationally using a formula which considers the size of population in the force area and the type of policing challenges faced. There is no discretion for a PCC to vary the salary of an existing Chief Constable. PCCs (and police authorities before them) do, however, have the ability to offer various benefits to Chief Constables as part of their remuneration package in accordance with Police Regulations 2003. This has led to a variety of packages being in place across England and Wales with Police Authorities/PCCs sometimes using benefits as a lever to attract and retain good candidates.

The Chief Constable currently receives a salary of £137,454. In addition to basic salary, she receives a number of benefits. The existing benefits package was agreed by the former Police Authority and has been in place since 2007.

Police Regulations

Police Regulations are clear that benefits in the form of 'allowances' cannot be paid except as provided for in the Regulations, or approved by the Home Secretary. Police Regulations are legislation and have the same legal effect as an Act of Parliament. Where they are expressed in terms of requiring something to be done or prohibiting something from being done, any failure by a PCC to comply will be susceptible to legal challenge. It was therefore important for the PCC to ensure that any changes to the Chief Constable's benefits were legally compliant.

As to the ability of the PCC to make payments beyond those authorised by the Regulations and determinations, a PCC can only lawfully do the things that they are empowered to do by legislation. However, PCCs have general statutory powers to do anything calculated to facilitate, or conducive to the exercise, of their functions. On the face of it, this would include providing additional remuneration to the Chief Constable. However, this depends on the specific circumstances and the Home Office has advised PCCs that it is prudent to seek legal advice if any such payments are planned.

Our legal advice notes that, should a PCC wish to exercise this power, he should carefully justify his rationale in a policy document.

Reasons for changes to the existing benefits package

The PCC must ensure that the package currently offered to the Chief Constable is on a sound legal basis. Furthermore, both the PCC and the Chief Constable are looking to ensure they comply with the principles of transparency in respect of public funds.

Chief Officer packages have attracted a great deal of scrutiny in recent times, both from the media, through FOI requests and from inspection agencies such as HMIC. This is partly because of the climate of austerity and a desire to ensure proper use of public money, and partly because some packages offered to Chief Officers have pushed (or indeed exceeded) the boundaries of what is permissible within Police Regulations.

Rationale for the existing Surrey package

Whilst Surrey has been successful in securing previous Chief Constables of a high calibre, it has always proven difficult to attract potential candidates in any number. Several factors have historically exacerbated this problem. Surrey borders the Metropolitan Police, which remunerates its officers more generously. Cost of living in Surrey makes moving to the area less attractive.

The Police Authority used the benefits package as a means of compensating for the relatively low salary for Surrey's Chief Constable, certainly compared to other south east forces and those who share the challenges associated with bordering large metropolitan areas.

Guiding Principles

As part of his review of the current package, the PCC has sought to ensure the following:

Lawfulness – the PCC has ensured that the Chief Constable's package is lawful within the provision of Police Regulations 2003, the Home Secretary's determinations thereunder, or justified by other means. He has sought legal advice on proposed changes.

Value for Money – the PCC has considered whether the existing package offers best value to the Surrey public, particularly given the current climate of austerity and cut backs across the public sector.

Fit for purpose – the package should help ensure that Surrey is a competitive 'employer' and can attract and retain the best candidates for the role of Chief Constable.

Fair – the Chief Constable has previously entered into an agreement with the Police Authority/PCC in good faith and any changes that are significantly detrimental to the Chief Constable could have been open to a public law claim. If the PCC was to have proposed a variation to which the Chief Constable was not agreeable, she could argue that the PCC has acted in breach of contract and/or frustrated a legitimate expectation. The Chief Constable has been given the opportunity to review variations to her existing terms and conditions before any variation takes place.

Changes to existing terms and conditions

The following changes have been made to the benefits package previously agreed by the Police Authority:

- The removal of reference to the Chief Officer bonus scheme as this has been abolished as a result of the Winsor review of terms and conditions
- Greater clarity around the provision of an operational vehicle, the basis upon which it can be used and the resulting tax liabilities
- At the Chief Constable's instigation, the removal of a 'fuel allowance' previously agreed by the Police Authority
- At the Chief Constables instigation, removal of reference to the provision of a driver
- Clarity around the legal basis upon which the Chief Constable will receive private medical cover.

The Chief Constable is not an 'employee', rather she is a Crown Office holder. As such, she does not have a contract of employment. The Chief Constable has been presented with a revised letter which more clearly sets out her revised terms and conditions and the legal basis upon which each is provided. That document is appended to this decision paper.

The new terms and conditions come into effect on 1st April 2014.

Police and Crime Commissioner Approval

I approve the recommendation(s):

Signature:



Date: 26/03/2014

All decisions must be added to the decision register.

Areas of consideration

Consultation

The Chief Constable has been consulted on the proposed changes prior to implementation. The PCC has been party to discussions about Chief Officer benefits packages at a national level, through the Association of Police & Crime Commissioners.

Financial implications

The revised package results in a degradation in benefits for the Chief Constable given the removal of a potential bonus payment, fuel allowance, driver and private medical cover for her wider family.

Legal

The PCC has taken legal advice on certain elements of the revised package.

Risks

As highlighted in the report.

Equality and diversity

None.

Risks to human rights

None.