

Report for a Decision

1 October 2023

Report of the Chief Executive & Monitoring Officer

Forthcoming Chief Constable Vacancy - Options

1. Executive Summary – Purpose of the Report

1.1. For the PFCC to consider

1.1.1. the factual background

1.1.2. the legal powers and duties available to the PFCC

1.1.3. each of the options set out and appraised in this report

1.1.4. the professional advice of the statutory officers

1.1.5. the professional advice of the local/national stakeholders consulted by the Commissioner

1.1.6. the internal stakeholder input offered to the Commissioner

1.1.7. the recommendation set out in this report

1.2. For the PFCC to determine when and how an appointment should be made to the role of Chief Constable of North Yorkshire Police.

1.3. For the PFCC to give strategic direction at her discretion about any consequential matters arising.

2. Recommendations

2.1. That the PFCC notes that there are a number of lawful options, as set out in this paper.

2.2. That the PFCC should take into account the national and local stakeholder input sought and offered to her, as well as the professional advice of her statutory officers and her Executive Management Team overall.

- 2.3. Whilst all of the options set out are lawful, the PFCC should be mindful of the constitutional issues and risks which come to bear on her decision, as highlighted by the statutory officers.
- 2.4. That the PFCC should determine the option that she considers to be in the public interest.
- 2.5. That whilst it follows that there is no single straightforward or uncontroversial option available, on fine balance the PFCC is recommended to select Option 5 (recruitment to a full fixed term appointment) should she consider it in the public interest to do so.

3. Background

- 3.1. Chief Constable Winward will retire on 31 March 2024.
- 3.2. A vacancy in the office of Chief Constable will therefore exist with effect from 1 April 2024.
- 3.3. Chief Constable Winward has given notice to retire, substantially in advance of the commencement of the three month period of notice required of her. It is understood that she decided to do so as soon as she had made the personal decision to retire and that she considered it to be in the public interest to make her wish and intention known as soon as her mind was made up.
- 3.4. On 22 September 2023 the PFCC and Chief Constable Winward issued a joint public statement informing colleagues and the public of the Chief Constable's decision and acknowledging in positive terms, her public service career accomplishments.
- 3.5. As is normal, some accrued leave entitlements will mean that Chief Constable Winward may be absent for part of her remaining time in office. The date of Chief Constable Winward's resulting last practical day in the office is dependent upon the calculation of her accrued annual leave and other entitlements, which are not yet finalised and approved. However, on current working assumptions, it appears likely that she will be absent from a date in late December 2023.
- 3.6. For any period during which the Chief Constable is absent before 31 March 2024, the law makes provision for the Deputy Chief Constable to assume the role of Chief Constable on an acting basis. During any such period there would

be consequential backfill arrangements necessary at Chief Officer Team level. These backfill arrangements are important consequential matters but they are not considered in detail in this paper.

3.7. The PFCC sought immediate advice from the Chief Executive & Monitoring Officer about the options available to her to ensure the fulfilment of her duty to ensure that the force has efficient and effective leadership, and the legal and constitutional issues that she should consider. Such advice would ordinarily be expressed in confidence, but in view of the public importance of the decisions required of the PFCC, the advice of the Chief Executive & Monitoring Officer is summarised later in this paper.

3.8. Following advice and consideration, whilst acknowledging the need for next steps to be determined without undue delay, the PFCC decided that before reaching a decision she would seek the advice of her Executive Management Team overall; and take appropriate soundings from key national stakeholder organisations with a remit in respect of police leadership.

3.9. These steps have been taken and are summarised in this report.

3.10. The Force's organisational and operational status is a vital key consideration for the Commissioner. As this report explains, this is not just the Commissioner's individual view – it is reflected in the advisory and stakeholder feedback to the Commissioner about the question of whether to commence a recruitment to the role of Chief Constable straight away. All of the advice provided to the Commissioner has stressed the need for North Yorkshire Police to continue its improvement programme. The Force has in the recent past fallen short, in some significant areas, of the standards of excellence to which it aspires and which the public have a right to expect. The findings of successive HMICFRS inspections reflect the level of concern about the Force's financial and operational performance. The Commissioner has intensified assurance and scrutiny work since being elected in 2021 and has done so with transparency and immediacy – holding the Chief Constable and the Force overall to account in public for assurance that the necessary improvements are being made. The Commissioner is assured that North Yorkshire Police performance is turning a corner and that is recognised by the local and national

soundings she has taken. National bodies consulted all considered that the improvements in Force organisational performance can best be sustained under stable and visionary leadership.

4. Legal Powers and Duties

- 4.1. The PFCC is responsible for appointing to the role of Chief Constable in accordance with s38 and Schedule 8 Police Reform and Social Responsibility Act 2011 ('the 2011 Act') and the Police Regulations made under s50 Police Act 1996.
- 4.2. Home Office Circular 013/2018¹ outlines those legal requirements and the principles for appointment of chief police officers.
- 4.3. It follows that the decision as to when and by what method to advertise, select and appoint to the role of Chief Constable, is a matter for the PFCC.
- 4.4. The Police, Fire and Crime Panel ('PF&C Panel') has responsibility for the confirmation process, in the event that the PFCC notifies the PF&C Panel of a proposed appointee to the role. The rules in respect of confirmation are set out in Schedule 8 of the 2011 Act and in further detail in the Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012. The PF&C Panel can approve, disapprove or veto a candidate. The PF&C Panel's role in the confirmation process means that members/officers of the Panel ought not to play a role in the earlier stages of any appointment process. For example, PF&C Panel members are prohibited from sitting as Independent Members of shortlisting or selection panels².
- 4.5. Guidance on best practice for advertising, shortlisting, selecting and appointing Chief Constables is issued by the College of Policing³.
- 4.6. The Chief Executive & Monitoring Officer is responsible for ensuring that the PFCC's decisions about this matter are lawful and that any appointment process decided upon by the PFCC accords with proper practice – see "Role of the Chief Executive of the Office of the PCC" in the College of Policing Guidance.

¹ [Circular 013/2018: selection and appointment of Chief Officers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684441/circular-013-2018-selection-and-appointment-of-chief-officers.pdf)

² See Home Office Circular 013/2018 'The Independent Member'

³ [Guidance for appointing chief officers \(college.police.uk\)](https://www.college.police.uk/guidance/013-2018)

- 4.7. The Home Office Circular and the College of Policing best practice guidance also stipulate other key checks and balances to ensure open and rigorous best practice in recruitment, such as the appointment of an independent panel member for a shortlisting, assessment and selection with responsibility for reporting on the integrity and quality of the process as part of any confirmation hearing. The independent member should themselves be selected by an open and fair process.
- 4.8. Where an appointment is made, a national toolkit has been made available by the Association of Police and Crime Commissioners, for documenting the terms of appointment. Although commonly referred to as 'contracts', Chief Constables do not in fact serve under contracts of employment. An appointment of a Chief Constable must be for a fixed term in accordance with the Police Regulations and Determinations. Those rules allow for one term of up to five years, one extension of up to three years and subsequent extensions of up to one year each.
- 4.9. There are circa seven months remaining in the current PFCC term of office – approximately 15% of a standard PFCC term as defined in the 2011 Act. There is no explicit legal provision which constrains the Commissioner from making an appointment of a Chief Constable at any point in a term of office. However, given the fixed term appointment provisions set out above, should the current Commissioner make an appointment to the role of Chief Constable, such an appointment would commence after the vacancy arises on 31 March 2024 and as a matter of logic and law, inevitably bind her successor for all or part of their term of office⁴. On this point, see the sections of this report which set out the statutory officer advice, Executive Management Team advice and the national stakeholder soundings.
- 4.10. In respect of other relevant legal matters, this paper makes the following electoral cycle assumptions
- 4.10.1. That the Statutory Instrument which will create the York and North Yorkshire Mayoral Combined Authority will pass its local authority

⁴ Any PCC or equivalent (such as a Mayor with PCC powers) may appoint, suspend or remove a Chief Constable but may only do so in accordance with s38 and Schedule 8 of the 2011 Act.

and parliamentary approval stages and become law, before the Chief Constable role falls vacant on 31 March 2024 – and that as a result there will be an election to the office of York and North Yorkshire Mayor in May 2024 ; or

4.10.2. That alternatively, there will be an ordinary election for the office of Police, Fire and Crime Commissioner in May 2024; and

4.10.3. That the pre-election period will commence on a date to be fixed towards the end of March 2024 and that any appointment process must be the subject of a Decision Notice and a public confirmation hearing. It follows that any significant public interest decision (such as an appointment to the role of Chief Constable) made during the period of heightened sensitivity must be approached with regard to the prevailing guidance on such matters⁵ (including, logically, making such decisions in advance of the pre-election period wherever possible and avoiding them coinciding with the pre-election period).

4.10.4. That the Mayoral or PFCC term that commences in May 2024 will run to May 2028.

5. Available Options

5.1. Whilst there are variations about the detail of how such options might operate, the broad options available to the PFCC are, in summary, as follows.

5.1.1. Option 1 – to agree an extension of the term of office of Chief Constable Lisa Winward, to a date after the new Mayoral/PFCC term commences in May 2024.

5.1.2. Option 2 – to arrange for the Deputy Chief Constable to act as Chief Constable from the date of Chief Constable Winward’s last practical day in the office, until the Mayor or PFCC is able to make an appointment in accordance with the rules and guidance set out in this report

⁵ See, for example, the guiding principles set out in paragraphs 13-14 of the guidance to civil servants at [May2023 Local Elections guidance conduct civil servants.pdf \(publishing.service.gov.uk\)](#) and the Code of Recommended Practice on Local Authority Publicity at [1878324.pdf \(publishing.service.gov.uk\)](#)

5.1.3. Option 3 – to arrange for a temporary appointment of an Acting Chief Constable by appointing a second Deputy Chief Constable to act in an Interim capacity

5.1.4. Option 4 – to commence the process for appointment of a Chief Constable explicitly offering a fixed term of substantially less than five years in duration – in other words, the 'short FTA' option.

5.1.5. Option 5 – to commence the process for appointment of a Chief Constable offering a fixed term of up to five years – in other words, the 'full FTA' option.

5.2. In accordance with the advice of the statutory officers and the Executive Management Team, before appraising those options the PFCC decided to take to seek advisory input and soundings from national stakeholder bodies with a remit in respect of police leadership. This was considered to be the appropriate and best-informed approach to deliberating a decision of the most significant public interest. The Commissioner also considered this to be diligent and appropriate in any event, but especially in circumstances where the responsibility as to the choice of option sits entirely with the PFCC but at a time within reasonable sight of an election – and in addition to the fact that the current PFCC does not envisage circumstances in which she will remain in office following that election.

5.3. Options Appraisal and Stakeholder Input

5.3.1. Option 1 – this option is at odds with the decision reached and announced by Chief Constable Winward; no revision of that decision is at large and this option is therefore unavailable not considered further in this paper.

5.3.2. Option 2 – the Deputy Chief Constable acts as Chief Constable by automatic operation of law during any period of absence or vacancy. The PFCC has a consultee role in the appointment of a Deputy Chief Constable, putatively for this very reason – the Deputy Chief Constable must be capable of leading the Force under such circumstances. North Yorkshire

Police has an accomplished and talented Deputy Chief Constable in whom the Commissioner has confidence. However, long term periods of acting leadership arrangements are generally to be avoided by design, however meritorious the individual acting postholder may be. The Commissioner is known to be concerned that acting arrangements which endure for the period referred to at paragraph 3.5 above until the completion of an appointment process downstream of the May 2024 election, would amount to a long-term acting arrangement. The Commissioner is mindful of the ongoing process of Force improvement following the recent HMICFRS inspections, which has engaged the talents and energies of all force leaders, including but of course not limited to the Chief Officer Team. Mindful of the acute need for focussed and resilient leadership at a time when serious and sustained improvement is required, as well as the delivery of the Police & Crime Plan in any event, the Commissioner is known to be uneasy about a decision which would consequentially give rise to acting arrangements in the roles of Chief Constable, Deputy Chief Constable and one Assistant Chief Constable role. Notably, none of the national police leadership stakeholders consulted by the Commissioner, ultimately chose this option as their preferred option although none demurred from the confidence expressed by the Commissioner in the individuals operating at warranted Chief Officer Team level within North Yorkshire. Whilst it was considered in principle to be a particularly meritorious option by one national stakeholder, in practice Option 5 was considered by that stakeholder to outweigh Option 2 for additional positive reasons. That said, this option is recommended for serious consideration by the Commissioner given that it

- 5.3.2.1. would harness the experience, determination and commitment of the Deputy Chief Constable and Chief Officer Team colleagues
- 5.3.2.2. already has the Commissioner's confidence for periods of absence of the office holder
- 5.3.2.3. is an option which leaves the Commissioner's successor to make an appointment to a fixed term at their discretion – and thus avoids

any measure of constitutional and/or political controversy in the run-in to the Mayoral election

5.3.2.4. is the option which is the legal default for good reasons, as explained at 5.3.2 above.

5.3.2.5. was the initial majority preference of the Executive Management Team (collectively, including the statutory officers) for the above non-exhaustive list of reasons

5.3.3. Option 3 – to arrange for an Interim Chief Constable to serve for a period less than an initial fixed term substantive appointment, requires some measure of innovation. As a matter of law, it means secondment of an officer to serve as an additional Deputy Chief Constable and to act as Interim Chief Constable by operation of law. Whilst this option has some superficial positive features in that it would lend additional resilience to the Chief Officer Team and would also avoid inherent constitutional and/or political controversy (i.e. as referred to at 5.3.2.3 above) it is known to have been used in other Forces only where some critical exceptional circumstances prevail –and whilst the Force does need to improve, the circumstances are not of that ilk. The evidence gathered from the Commissioner’s assurance programme suggest that the improvements are well underway. The Deputy Chief Constable has in any event, led the improvement work. Choosing proactively to select a secondee could signal a lack of confidence in the strength in depth of the Chief Officer Team which would be at odds with the Commissioner’s view and the evidence available to her. This option was also not the preferred option of any of the national police leadership stakeholders consulted by the Commissioner (although in one case a stakeholder suggested that a national ‘expressions of interest’ process might lend procedural and substantive merit to the option, if the Commissioner chose it as her preferred option). Accordingly, unless the Commissioner considers that there is a supervening public interest reason for considering this option further, it is not recommended.

5.3.4. Option 4 – options 4 and 5 are in legal terms, in effect, variations of each other. Option 4 would require the Commissioner to explicitly rule out

a full initial fixed term being available to a preferred candidate, right at the outset of any recruitment. This would offer the advantage of making an appointment which only partially 'ties the hands' of the Commissioner's eventual successor. A fixed term of two years would expire in March 2026, a term of three years would expire on March 2027 and so on. Whilst there is some evidence that Commissioners across England and Wales have offered explicit fixed terms of less than five years in the first instance, there is not known to be evidence of offering such a short term as two years (as would be required in order to coincide with the mid-point of the Mayoral term). National police leadership stakeholders consulted by the Commissioner all considered that capping the initial fixed term offered as part of an appointment process would constrain the market interest in the role and could be at odds with the aim of achieving stable visionary leadership for the Force. However, choosing this option would offer the advantage of simultaneously permitting an appointment to be made whilst preserving the ability of the Commissioner's successor to determine whether to retain or replace the Chief Constable during their term of office, subject of course to them doing so fairly and lawfully.

5.3.5. Option 5 – appointment to a full fixed term appointment of up to five years in duration is the option that but for other relevant circumstantial considerations, would be the default presumption for a Commissioner. The Commissioner must be – and is known to be – mindful of the forthcoming electoral cycle which (it is assumed, subject to unforeseen changes) will see the first election of a Mayor for York and North Yorkshire, following the first-ever transfer of an existing Police, Fire and Crime Commissioner model to such a Mayoralty. It is right to take account of the need for the Mayor to have confidence in the key appointment of the Force's most senior officer, and one way on which that can be assured is to concede the decision on appointment to the Mayor by choosing an option other than Option 5.

5.3.6. Any critical path timeline will inevitably result in the window for the PFC Panel confirmation hearing coinciding with an active period of campaigning

for the May election – in other words, during January or February. There is a risk that it might slip into March, possibly even into the pre-election period. Proceeding expeditiously may mitigate this issue – but it cannot eliminate it.

5.3.7. Significant political controversy may itself have a downbeat effect on the level of interest in the role – but the extent and impact of this cannot accurately be predicted.

5.3.8. Significant political controversy may impact upon the Force, which may be felt to be at odds with the objective of ensuring stability and continued focus on improvement.

5.3.9. However, the feedback from police leadership stakeholders was that

5.3.9.1. there is a substantial body of precedent for PCCs and equivalents making appointments within sight of an election. See Appendix A to this report. Whilst all precedents are fact-sensitive and each turns on its own individual features, examples drawn to the Commissioner's attention include

5.3.9.1.1. South Wales in November 2020

5.3.9.1.2. Lincolnshire in December 2020

5.3.9.1.3. Lancashire in December 2020

5.3.9.1.4. Greater Manchester in December 2020

5.3.9.1.5. Cheshire in March 2021

5.3.9.1.6. Merseyside in March 2021

5.3.9.2. there is no legal bar to the PFCC making an appointment seven months before an electoral cycle.

5.3.9.3. North Yorkshire Police would, in the view of His Majesty's Chief Inspector of Constabulary, benefit most from the substantive appointment of a Chief Constable to lead the Force for a full fixed term. HM Chief Inspector has offered one of His Majesty's Inspectors to act as professional policing advisor on any appointment panel.

5.3.9.4. There are other ways in which to ensure that the appointment of a Chief Constable commands the support of the public and of the incoming Mayor or PFCC elected to reflect the views of the public.

These could include (for example) broader stakeholder panels as part of the recruitment process, the use of public engagement as part of assessment/selection processes, expansion of the selection panel to five members, extensive use of the College of Policing recruitment consultancy offer to ensure a strong field and rigorous choice, amongst other approaches.

5.3.9.5. Any process should be designed to build upon the strengths and address the weaknesses of North Yorkshire Police; achieve the outcomes and priorities for policing and crime set out in the Police and Crime Plan and complemented by the Force Management Statement; and 'bake in' and build upon the process of improvement.

5.3.10. Additional stakeholder feedback

5.3.10.1. The Commissioner has been commended by the national stakeholders for approaching the decision by a consultative approach, taking soundings from police leadership stakeholders and gathering evidence before determining the preferred option. One stakeholder indicated that doing so was in accordance with the Nolan Principles and particularly highlighted the principle of selflessness, which they considered to be engaged in view of their preferred option (Option 5) being likely to involve the Commissioner risking political controversy.

5.3.10.2. The bodies consulted were

5.3.10.2.1. His Majesty's Inspectorate of Constabulary & Fire and Rescue Services (including the Chief Inspector of Constabulary)

5.3.10.2.2. The College of Policing (including the Chief Executive of the College)

5.3.10.2.3. The Association of Police and Crime Commissioners (including the Chair of the Association and the Senior Policy Manager with responsibility for the police workforce portfolio)

5.3.10.3. Internal input has been received from UNISON in particular, favouring Option 5.

5.3.11. Statutory Officer & Executive Management Team Advice

5.3.11.1. In accordance with good practice, the Commissioner consulted with her Executive Management Team consisting of statutory and non-statutory officers.

5.3.11.2. A range of views were discussed and the merits and risks of each option, were aired and discussed. There was consensus that seeking advice and input from key national stakeholders and being receptive to internal representative body input if offered, would be appropriate and should come before any options appraisal and any decision.

5.3.11.3. Responsibility for advising the Commissioner on decision-making rests predominantly with the Chief Executive & Monitoring Officer⁶. In this instance, the Monitoring Officer initially advised the Commissioner to look most favourably upon the option which appeared to provide both stability and the least political or constitutional risk, given the impact that such risk might have upon North Yorkshire Police. This balance was at first blush best catered for by Option 2. However, both statutory officers reminded the Commissioner that the decision was hers and that there was no legal bar to any of the options tabled – all of them being legitimate and lawful. The Chief Executive & Monitoring Officer simultaneously agreed with the Commissioner that the taking of national stakeholder soundings before appraising the options and reaching a decision, was the right way to approach the process. The Chief Executive took part in discussions with all stakeholder bodies consulted by the Commissioner and heard their views first hand. In

⁶ In addition to the statutory functions of the Monitoring Officer to ensure lawfulness, the College of Policing Guidance stipulates as follows:

The role of the chief executive is to support the PCC in undertaking their responsibilities. In supporting the PCC in the appointments process, the chief executive should: ensure the principles of merit, fairness and openness are adhered to throughout the design and delivery of the appointment process; advise and assist the PCC throughout the appointment process; ensure that the appointment process is properly conducted and in line with responsibilities and requirements outlined in legislation; ensure appropriate monitoring of the appointment process.

the light of the weight of stakeholder feedback, the Chief Executive & Monitoring Officer feels able to make a recommendation on fine balance in favour of Option 5.

5.3.11.4. However, in doing so the Chief Executive & Monitoring Officer strongly advises the Commissioner to take every available step to ensure that the process succeeds in generating a strong field; that it leaves no stone unturned in determining the merit of the applicants for appointment; and that serious consideration is given to making the process as comprehensive and inclusive as it can be, including even more independent and stakeholder involvement than is conventional, to ensure that the public interest is comprehensively served – and that the Commissioner has the fullest range of input, perspective and advice upon which to rely in making a decision about preferred candidacy. With that in mind, a range of next steps are summarised in the conclusion to this report.

5.3.11.5. A mature draft of this report was considered by the Commissioner and the Executive Management Team on 2 October 2023. Subject to minor contextual amplifications, its content was approved. This final version of the report and recommendations is presented to the Commissioner with the full support of the Executive Management Team.

6. Conclusion

6.1. The Commissioner is asked to consider this report and the recommendation it contains.

6.2. If the recommendation is accepted, the following steps will be required

6.2.1. The publication of a Decision Notice, to which this report should be appended.

6.2.2. The preparation of a public statement to complement the Decision Notice.

6.2.3. The commencement of work on the appointment process, to include

- 6.2.3.1. Immediate establishment of a recruitment working group led by a Director, to include OPFCC and Enable resources
- 6.2.3.2. Engagement of the College of Policing to support the process
- 6.2.3.3. Seeking 'mutual aid', advice and support from
 - 6.2.3.3.1. Regional OPCCs
 - 6.2.3.3.2. The Association of Policing & Crime Chief Executives
 - 6.2.3.3.3. The Association of Police and Crime Commissioners
- 6.2.3.4. Establishment of the Commissioner's approach to the appointment process, including consideration of
 - 6.2.3.4.1. Shortlisting, assessment and selection panel membership and training in accordance with the College of Policing Guidance
 - 6.2.3.4.2. Stakeholder panel membership and availability
 - 6.2.3.4.3. Independent Member selection process in accordance with the College of Policing Guidance
 - 6.2.3.4.4. Design features of the process, such as
 - 6.2.3.4.4.1. Recruitment prospectus
 - 6.2.3.4.4.2. Advertising/promotional strategy including online, new media and social media
 - 6.2.3.4.4.3. Other steps to encourage the strongest possible field of potential Chief Constables, such as direct mailing to all eligible officers
 - 6.2.3.4.4.4. Use of recruitment consultancy services, if considered a necessary investment
 - 6.2.3.4.4.5. Optional innovative selection processes such as public engagement events as referred to at paragraph 5.3.5.4
 - 6.2.3.4.5. The critical path timeline – based on experience it is considered challenging but achievable to complete selection of a preferred candidate before the end of December 2023 assuming all steps proceed smoothly and without undue delay. However, in accordance with the advice set out in this report, the quality

of the process must be considered to be the overriding objective in the public interest.

6.2.3.5. Work will continue with the PFC Panel to identify a suitable window for confirmation processes to take place.

6.2.4. With all of the above matters in mind, the Commissioner is asked to consider

6.2.4.1. the factual background

6.2.4.2. the legal powers and duties available to the PFCC

6.2.4.3. each of the options set out and appraised in this report

6.2.4.4. the professional advice of the statutory officers

6.2.4.5. the professional advice of the local/national stakeholders consulted by the Commissioner

6.2.4.6. the internal stakeholder input offered to the Commissioner

6.2.4.7. the recommendation set out in this report

6.2.5. to determine when and how an appointment should be made to the role of Chief Constable of North Yorkshire Police.

6.2.6. to give strategic direction at her discretion about any consequential matters arising.

Simon Dennis

Chief Executive & Monitoring Officer

1 October 2023

Appendix A – APCC Appointment Precedent Paper



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