

Pre-election Period (Purdah) Guidance For PCC Elections May 2021

1. Background

The next PCC Elections are due to take place in May 2020. Set out below are some key principles which Police and Crime Commissioners and Deputies should consider during the sensitive period prior to those elections¹.

You might like to note that APACE is refreshing its more detailed guidance for OPCCs and Monitoring Officers in relation to the staff of Police and Crime Commissioners, which dovetails with this guidance.

2. What is the pre-election period?

Whilst this is not defined in an Act of Parliament, restrictions are placed on local authorities (applicable to PCCs and their Deputies too) by the [Code of Recommended Practice on Local Authority Publicity](#), which refers to periods of heightened sensitivity during elections. Much of this sensitivity is about exercising greater care to observe laws and rules which apply in any event, but recognising that public bodies/offices are likely to come under greater scrutiny at election times.

These conventions generally apply even where elections do not directly involve those bodies, but will be more rigorously applied in situations where they do – as will be the case for Police and Crime Commissioners in relation to the upcoming elections. This could have an impact in relation to on-going business for Police and Crime Commissioners. The convention anticipates that continuing significant business, such as making decisions affecting future matters, should be restricted, where the election directly affects the office, and even where an individual Police and Crime Commissioner is not standing again, this will still apply. However, Police and Crime Commissioners are executive office holders and must be able to continue to make some decisions, if necessary, to ensure the public is properly protected, so they cannot stand down during the pre-election period in the same way that councillors might. This may be a difficult balancing act for Police and Crime Commissioners, although slightly different considerations might apply to Deputies. These points are discussed in more detail later in this document.

Strictly speaking there is no specific legal remedy for breaching the rules around the pre-election period. However, as many of the requirements are about exercising additional care under existing rules, there are often specific remedies for breaching those rules. In addition, it should be borne in mind that there is an increased reputational risk if complaints are made to police and crime panels, or if there is criticism from the media or organisations like the Committee on Standards in Public Life about the way that a Police and Crime Commissioner behaves during this sensitive period.

3. Police and Crime Commissioners and Deputies

¹ This period is sometimes referred to as ‘purdah’, but we use the expression ‘pre-election period’ in this document.

Whether or not Police and Crime Commissioners have a particular allegiance to a political party, it is recognised that this is a political role, but in seeking re-election themselves, or supporting other individuals seeking election, Police and Crime Commissioners are acting in a personal capacity and should not use their **public office** to influence the outcome of the PCC Elections. Deputy Police and Crime Commissioners are in much the same position, since they are also in a political role, and they should follow the advice for Police and Crime Commissioners, except where there is some difference as set out below, rather than the advice relevant to the other staff of the OPCC, which is more restrictive.

Police and Crime Commissioners may feel that some pointers would be useful to clarify what they (and their Deputies) are able to do, in order to minimise possible reputational and legal risks to their position during the pre-election period.

There are three key points which Police and Crime Commissioners may wish to bear in mind (although it is worth remembering that these apply to Police and Crime Commissioners at all times in any event, although they may wish to exercise particular care about these points in the pre-election period):

- ▶ The restrictions placed on Police and Crime Commissioners by virtue of the Code of Practice on Local Authority Publicity – (*see S6 Local Government Act 1986, as amended by Schedule 16, paragraph 173 of the Police Reform and Local Responsibility Act*)
- ▶ The impact of the Seven Principles of Public Life (Nolan Principles), by which Police and Crime Commissioners are bound as holders of a public office
- ▶ The impact of the PCCs Oath of Office (see - the Police and Crime Commissioner Elections (Declaration of Acceptance of Office) Order 2012)

These documents do enable PCCs to act in a political capacity – both in seeking re-election themselves, or in supporting political colleagues seeking election – and to campaign as a local politician who, as a matter of record, is the PCC.

However, PCCs should not use their **public office** (see ‘Use of Public Resources’ below for more detail on this) for political purposes. In the context of a PCC election, this means, amongst other things, that Police and Crime Commissioners must be very careful how they use information that has come to them in their official role during their time in office. In particular, they should not use information in support of their campaign which is not publicly available to other candidates.

PCCs remain able to participate in elections in support of their party and candidates, even where they are not standing themselves, but should take particular care with two overarching key principles (noting, as mentioned above, that they apply at all times and not just in pre-election periods):

- A The Code of Practice on Local Authority Resources prevents the use of public resources for political purposes, which includes both the staff of the PCC and force, and the facilities and equipment of the OPCC/force ([Cabinet Office Guidance](#) also contains some helpful pointers to what might be considered inappropriate use of public resources);
- B They should not give the impression that the local police support a particular party or individual, or use information about the police force in seeking re-election or supporting other PCC candidates which is not publicly available.

4. Use of Public Resources

General points about the use of public resources include:

- i. Even where staff are not politically restricted the Police and Crime Commissioner cannot use their services for political purposes while in they are in the office – this includes the use of the Deputy PCC while he or she is also in the office or is using office equipment;
- ii. Facilities which cannot be used for political purposes include the use of rooms, buildings, IT equipment, telephones, etc, which belong to the OPCC or force;
- iii. Police and Crime Commissioners will want to be particularly careful in their use of social media, such as Facebook and Twitter accounts which are held in the name of the OPCC or force, to avoid inappropriate use, such as tweeting, retweeting or ‘liking/favouriting’ political material.
- iv. The Police and Crime Commissioner should not use events or other forums, which he or she has organised in their official capacity for PCC election campaigning or, where the PCC is not standing again, invite other candidates to do so. It is acknowledged that, if a local politician decides to turn up at an official PCC event and act in a political way, this might be beyond the control of the Police and Crime Commissioner, but where this is the case, the PCC should try to mitigate the problem to prevent the use of public resources for political gain;
- v. Police and Crime Commissioners cannot claim travel or other expenses for political business;
- vi. All public information about policing should be available equally to all candidates. It will be primarily the duty of the OPCC staff to make this available, but the Police and Crime Commissioner should not hinder staff in discharging this duty.

5. Police Information and Force Neutrality

In relation to general points about use of policing and crime information and avoiding an impression that the force supports a particular party or candidate:

- i. Police and Crime Commissioners can communicate on a political and partial basis with local politicians in a personal capacity, but should not use information which is restricted, privileged or has come to them only by virtue of their office and is not publicly available, in seeking re-election or supporting other candidates.
- ii. Police and Crime Commissioners should ensure that the views expressed in seeking re-election or supporting other PCC candidates are clearly expressed as their own, and not presented as the view of either their public office or their force.
- iii. Police and Crime Commissioners will wish to be particularly cautious around publicity photos involving the force in campaign and political material, whether seeking re-election themselves or supporting other PCC candidates. In as far as possible, they should ensure this is in a private capacity, and not in an official capacity. This will assist in avoiding any impression that the PCC is using public resources (such as OPCC or force insignia or branding) to support their re-election, or that the force supports their re-election. It is acknowledged that this may be difficult, as serving PCCs cannot pretend they do not have a relationship with their own office or with the force – but they should consider with care the messages a photo might give in their own campaign material.

6. Business as Usual

As mentioned above, Police and Crime Commissioners are executive office holders and cannot simply stop doing business that keeps the public safe. However, PCCs will want to be careful to keep executive activity to the minimum that is necessary and proportionate to ensure their public office continues to function in critical areas. They should exercise great care in how they act during the pre-election period, to ensure that official business is not used to influence the outcome of the PCC elections, or give the impression that the force or OPCC support a particular candidate. Generally, Police and Crime Commissioners will want to avoid making any significant decisions in this period, particularly those which might have a visible public impact, or which involve announcements of new policies or directions, unless these are absolutely essential and unavoidable during the period. Police and Crime Commissioners may like to consider carefully, over their remaining months of office, how they can time any decisions or announcements they know they are due to make, so that this is done before the pre-election period starts.

Until 2017 Deputy Police and Crime Commissioners, were required to stand down before they lodged their nominations as a candidate, if they were standing for elections as a PCC (*see S65 (1)(e)(i) of the Police Reform and Social Responsibility Act 2011*).

However, the Policing and Crime Act 2017 changed this requirement, as S122 of that Act makes it clear that S65 (1)(e)(i) of the PRSRA does not prevent a deputy police and crime commissioner from being elected as a PCC at an ordinary election of police and crime commissioners.

Therefore, the requirement for a Deputy Police and Crime Commissioner to stand down from that role if they are seeking election as the PCC no longer applies and they can continue to serve as the Deputy throughout the PCC election period.

7. Offices of Police and Crime Commissioners

APACE has prepared guidance for OPCC Monitoring Officers and staff. Although OPCC and equivalent staff are not generally subject to the Civil Service Code (with some exceptions), the key principles for handling the pre-election period will be much the same as those set out in Cabinet Office guidance for civil servants.

The majority of OPCC staff are now politically restricted. The exceptions to this are the Deputy PCC and those staff that transferred from the police authority in 2012, if their role was not politically restricted at the time of transfer and their role/terms and conditions of employment have not been subsequently changed (*see S20(2), Schedule 15, Police Reform and Social Responsibility Act 2011*).

For the avoidance of doubt, holders of politically restricted posts are prevented from:

- Standing as a member of—
 - (a) the House of Commons;
 - (b) the European Parliament; or
 - (c) a local authority².
- Acting as an election agent or sub-agent for a candidate for Parliament, European Parliament or a local authority.

² Local Authority (defined in s 21 of the Local Government & Housing Act 1989) does not include a Parish Council

- Being an officer of a political party or of any branch of such a party or a member of any committee or sub-committee of such a party or branch if his duties as such an officer or member would be likely to require him—
 - (a) to participate in the general management of the party or the branch; or
 - (b) to act on behalf of the party or branch in dealings with persons other than members of the party or members of another political party associated with the party.
- Canvassing on behalf of a political party or on behalf of a person who is, or proposes to be, a candidate for election to Parliament, European Parliament or a local authority (the definition of which includes the office of PCC). *(see the Local Government Officers (Political Restrictions) Regulations 1990 (SI 1990 No 851))*

Members of the OPCC who are not politically restricted, can undertake the above activities in a **personal capacity** – but would be unable to use public resources (including the resources of the OPCC/force), or use their status as an employee of the OPCC to seek to influence the outcome of an election.

8. Timing

At present it is unclear when the pre-election period will start – and we await sight of the PCC Election Order, which should set out details of some critical timings. Given that local elections will also take place on the same day in some areas, this might also impact what the Electoral Commission and election officials decide locally and could mean that technically the pre-election period starts on different days in different areas. This period of heightened sensitivity generally starts between 4 and 6 weeks before the date of the election and, therefore, until greater clarity is available about this, Police and Crime Commissioners may wish to err on the side of caution and ensure that they, and their offices, plan for the longest pre-election period which could operate in their area.

The pre-election period will only end when a the newly elected PCC takes office – and the existing law on PCC elections (see PRSRA S50(7)) states that the term of office starts on the seventh day after the election. The serving PCC's term of office does not finish until the end of the sixth day after the election, to enable a short transition period to take place, and enable the incoming PCC to complete a number of things they must do before they can take up their office – including making a declaration of acceptance of office.

9. Further Guidance

The Chief Executives of the OPCC should be able to provide further detailed guidance in their capacity of Monitoring Officer, and if in doubt, it is suggested that Police and Crime Commissioners may wish to consult them. As noted earlier, APACE will produce detailed guidance for Monitoring Officers.

APCC Secretariat
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