



## Response to consultation on draft oath of office for Police and Crime Commissioners

### General comments

1. I was surprised and disappointed to see that prospective candidates were the only group whose views were being sought by the Home Office on the draft wording. It is not generally good practice to consult only one interest group. So I am grateful to the Association for PCCs for confirming that the views of others are also welcome.
2. I question whether the proposed text on its own technically amounts to an oath. Oaths are usually sworn on something, such as a bible. This is better described as an affirmation.
3. It is not clear why it is being introduced in this form. PCCs' powers and duties are defined by statute, and must be carried out in accordance with the usual requirements as to fairness and reasonableness. An 'oath' adds nothing to this, and potentially creates confusion, as people may take it as somehow overriding the legal constraints.

The Home Office press release refers to the oath sending 'the strongest signal' to people that the PCC is impartial. Even if you accept this as a valid reason, the wording goes way beyond this.

The text is very long and so exacerbates the potential for issues (see points below). If there must be a form of oath or affirmation, it should be short and padding free.

4. As proposed, the 'oath' could become a tool in judicial review cases, as it would be asserted that it forms part of the PCC's duties. The alternative is to say that it has no legal meaning – awkward when it is set out in secondary legislation. The text needs to be very carefully thought through in the light of this. My comments below do not attempt this level of analysis, as it would be a significant and time-consuming exercise beyond the scope of a consultation response.

5. As a whole, the text relies on phrases better suited to political speeches, as the meaning is hard to pin down but they sound reassuring. As a matter of principle, this is inappropriate in an oath or affirmation.
6. There is some material on the Home Office that indicates that the oath is intended to reflect the police attestation, but if so, it takes no account of their different roles and duties. The police attestation makes much more sense in its context than the draft wording does in the context of PCCs.
7. Although I would prefer the whole concept to be dropped, I make some comments on the text below to limit the problems if does go ahead.

**[Full Name] of [Place] do solemnly and sincerely promise that I will serve all the people of [Police Force Area] in the office of Police and Crime Commissioner without fear or favour.**

8. Why does it say 'all' the people? The word 'all' could be seen as implying every individual has a right to their needs being met, which is obviously impossible. Deleting it would make it clearer that there is a wider perspective of the public good.
9. 'Without fear or favour' is a traditional phrase that has been generally understood in its context over a long period. It seems reasonable to use it here as a sign of impartiality, although it should be made clear to those signing it that this does not refer merely to party political preferences.
10. My objections to the PCC oath or affirmation would be significantly reduced if it were kept to this section alone (with 'all' removed). This would cover the Home Office concern about 'sending a signal' without creating additional problems.

**I will act with integrity and diligence in my role and, to the best of my ability, will execute the duties of my office to ensure that the police are able to cut crime and protect the public.**

11. The first part of this merely says that they'll meet the legal requirements for those who exercise public functions, but uses different language, which as stated above can cause problems.
12. The second part refers only to the police cutting crime, whereas the PCC role has a broader remit for crime reduction through working with other agencies (as set out in the next part of the 'oath'). The police are only part of the toolkit for reducing crime.

It would be better if the policing element were covered with a more realistic view of the PCC's role in holding the Chief Constable to account, formulating a Police and Crime Plan and determining budgets - for example, 'ensuring an

efficient and effective police force'. After all, if part of the point of the 'oath' is to send signals to the public, it should at least be a meaningful signal.

**I will give a voice to the public, especially victims of crime and work with other services to ensure the safety of the community and effective criminal justice.**

13. This sounds more like populist political rhetoric than a realistic deliverable promise. It certainly has no place in a solemn 'oath' of office. Briefly:
- a. It is facile to imply that the 'public' have one single voice. People hold a range of opinions, some expressed more loudly and forcefully than others, which would need to be weighed and balanced in the light of evidence before action.
  - b. Further, what does 'giving a voice' actually mean? It is one thing for a PCC to take various views into account, as they are required to, but another to dress it up as a form of advocacy.

There is no evidential correlation between public opinion (even if you can ascertain it reliably) and the best ways to ensure safety and justice. The same applies to the views of victims. Policy and action should be evidence based.

Also, it is hard to see how this fits in with acting 'without fear or favour', and with meeting the fairness and reasonable tests which would be applied in judicial review.

- c. PCCs cannot 'ensure' the safety of the community or effective criminal justice (to many, this means harsher sentencing and faster court processes, neither of which are within the PCC's remit). This applies whether or not they work with other services. PCCs can aim to improve these things, but they can't guarantee delivery and it is false to imply that they can.

**I will take all steps within my power to ensure transparency of my decisions, so that I may be properly held to account by the public.**

14. There are good reasons why legislative and legal drafters use unqualified phrases like 'all steps' sparingly, as they remove the ability to balance factors properly and appropriately to particular circumstances.
15. The Freedom of Information Act 2000 usually governs transparency, with appropriate exemptions and protection for sensitive information, and would be the best tool in this case. If PCCs are to meet a higher standard, this should be a matter for statute and proper detailed consideration of the balance of interests. The draft wording makes any allowances for security or other concerns, and so creates a false expectation and potentially difficulties for

PCCs over public requests for information (particularly, for example, if security or commercial sensitivity is involved).

(Note: it would be 'within the power' of a PCC to release information to which exemptions could legitimately apply under the FOI Act)

**I will not seek to influence or prevent any lawful and reasonable investigation or arrest, nor encourage any police action save that which is lawful and justified within the bounds of this office.**

16. In some ways, this is a pointless statement of the existing legal position, but the inclusion of both 'lawful' and 'reasonable' makes it unclear. Lawfulness requires reasonableness, so what exactly is the additional test here? I also question whether it would be right for a PCC, during an investigation, to challenge the Chief Constable's judgment as to reasonableness (an operational matter).

Further, this statement implies that PCCs somewhere have the right to interfere in operational matters (but will choose not to exercise it), which is not correct. It would be better phrased if it simply stated that the PCC recognises that operational decisions are those of the Chief Constable.

  
7<sup>th</sup> September 2012