

Pre-election Period Guidance For PCC Elections May 2021

1. Background

The next PCC Elections are due to take place on 6th May 2021. Set out below are some key principles which Police and Crime Commissioners and their Deputies should consider during the period prior to those elections¹.

APACCE has also refreshed its more detailed guidance for OPCCs and Monitoring Officers in relation to the staff of Police and Crime Commissioners, which dovetails with this guidance, and has recently been circulated to Chief Executives.

2. What is the pre-election period?

Whilst the pre-election period 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 deliver on some areas of business as usual and indeed make some decisions linked to their statutory functions, so they cannot ‘stand down’ during the pre-election period in the same way that councillors might. These points are discussed in more detail later in this document, as are some additional considerations for Deputy PCCs.

Whilst there is no specific legal remedy for breaching the rules around the pre-election period, as many of the pre-election period requirements are about exercising additional care in relation to **existing** rules, the remedies that apply are usually the same as those already in place. PCCs should be aware that there may be increased scrutiny from the public and media during the pre-election period and potential for increased reputational risk if complaints in relation to the pre-election period are made to police and crime panels or to organisations like the Committee on Standards in Public Life.

3. Police and Crime Commissioners and Deputy PCCs

Whether or not a Police and Crime Commissioner is connected to a political party, it is recognised that this is a political role. During the pre-election period whether a PCC is seeking re-election

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

themselves, or supporting other individuals seeking election, they should be aware that – when doing this, they 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.

There are some key points which Police and Crime Commissioners may wish to bear in mind during the pre-election period (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 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 pay particular attention to two overarching 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 force supports 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 (this will include the DPCC) the Police and Crime Commissioner cannot use their services for political purposes **while they are in the office or use office equipment for campaign purposes;**

- ii. Facilities which cannot be used for political purposes include the use of rooms, buildings, IT equipment, telephones, website, etc, which belong to the OPCC or police force;
- iii. Police and Crime Commissioners should be careful in their use of social media, such as Facebook and Twitter accounts **which are held in the name of the OPCC or police force**, to avoid inappropriate use, such as tweeting, retweeting or 'liking/favouriting' political material. Police and Crime Commissioners should avoid posting to channels managed by OPCC staff during the pre-election period, but instead will have their own personal social media channels which are clearly distinct;
- 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 PCC candidates to do so. It is acknowledged that, if a local politician decides to attend an official PCC event and act in a political way, this may be beyond the control of the Police and Crime Commissioner, but where this is the case, the PCC should try to mitigate the issue 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 careful around publicity photos involving the force in campaign and political material, whether seeking re-election themselves or supporting other PCC candidates. 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

Police and Crime Commissioners are executive office holders and as a result will need to continue with some business as usual activity that delivers on their statutory functions and helps keeps the

public safe. However, PCCs will want to keep executive activity to only that which is necessary and proportionate to ensure their public office continues to function effectively. They should exercise 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 new or 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 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.

Deputy PCCs:

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 pre-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.
- 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

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

(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

The date on which the pre-election period begins will differ from area to area, because it is dependent on the date on which Local Police Area Returning Officers (PARO) open the formal nomination process. We understand that in some areas it will be as early as 18 March. The latest date we are aware of is 4 April. We note that central government will begin the pre-election period on 24 March. 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. Police and Crime Commissioners and their offices will observe pre-election restrictions from the date relevant to their local area, while the APCC will follow the dates that central government has set.

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, APACCE have produced detailed guidance for Monitoring Officers and OPCC staff.

**APCC Secretariat
March 2021**