For Information	
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Report to:	**Joint Audit and Scrutiny Panel**
Date of Meeting:	**28th February 2022**
Report of:	**Police and Crime Commissioner and Chief Constable**
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Agenda Item:	**5**

Joint Chief Finance Officer Protocol

1. Purpose of the Report

1.1 The purpose of this report is to provide the Joint Audit and Scrutiny Panel (JASP) with assurance in respect of the Joint Chief Finance Officer (JCFO) role that is presently in place across. The JCFO provides financial advice to both the Police and Crime Commissioner (PCC) and the Chief Constable (CC).

2. Recommendations

2.1 It is recommended that JASP approves the Joint Chief Finance Officer (JCFO) protocol (Appendix 1) for the term of its operation.

2.2 It is recommended that JASP reviews that JCFO protocol if it is necessary to continue with a JCFO following the term of the current temporary arrangement period (until 30th April 2022).

2.3 JASP is recommended to note the strategic risk to financial governance that exists with a JCFO role; to this extent, early advice has been provided to both Internal and External Audit on the temporary creation of the JCFO post.

2.4 JASP is also recommended to consider the assurance that the JCFO protocol provides in respect of ensuring effectiveness of financial advice arrangements within the Force and OPCC.

3. Reasons for Recommendations

3.1 A vacancy arose in the statutory officer role of OPCC CFO on 22 December 2021, with relatively short notice given on 20 December 2021. The PCC's substantive CFO, Mrs Charlotte Radford, gave notice of her intention to leave her post on 31st January 2022. Mrs Radford was entitled to take her annual leave entitlement prior to finishing in her employment with the OPCC, and she has requested to do this after 22nd December 2021. The PCC wishes to extend her formal thanks to Mrs Charlotte Radford for her years of service to the OPCC.

3.2 Schedule 1 7 (1) PRSRA 2011 requires the PCC to appoint a person to act as Chief Finance Officer (CFO) if and for so long as the post is vacant or the

holder of the post is unable to carry out the duties of the role. The PCC is also obliged, by Section 151 Local Government Act 1972, to appoint a chief finance officer who is responsible for the administration of the financial affairs of the Office of Police and Crime Commissioner (OPCC).

3.3 Given the urgent need to ensure no vacancy arose, a request was made to Chief Constable Craig Guildford to provide support to the Office of PCC (OPCC, in accordance with Policing Protocol Order SI 2011/ 2744 17(g) (PPO 2011), to ensure the OPCC would be able to discharge the PCC's statutory duties and use the PCC's powers to best effect in Nottinghamshire, and to maintain an effective and efficient police force for the Nottinghamshire area.

3.4 Such requests for support from police forces are enabled under the following specific provisions of the PPO 2011, which sets out how the functions of PCCs and CCs are operated in relation to each other:

Para 19	In order to enable the PCC to exercise the functions of their office effectively, they will need access to information and officers and staff within their force area. Such access to any information must not be unreasonably withheld or obstructed by the Chief Constable and/or fetter the Chief Constable's direction and control of the force; and,
Para 23(d)	Providing the PCC with access to information, officers and staff as required.

3.5 In response, CC Guildford agreed that his substantive Chief Finance Officer, Mr Mark Kimberley, could temporarily act as a Joint Chief Finance Officer for both the PCC and Nottinghamshire Police until 30th April 2022. The PCC wishes to record her thanks to CC Guildford for providing this collegiate support to the OPCC and would further note that CC Guildford's provision of support will ensure the continued operational effectiveness of Nottinghamshire Police.

3.6 Mr Kimberley's CFO service provision to the Office of Police and Crime Commissioner for Nottinghamshire will be enabled through a short-term arrangement between our Office and Nottinghamshire Police. The arrangement will terminate after 30th April 2022.

3.7 Mr Kimberley was formally proposed as the interim CFO for the OPCC to the Nottinghamshire Police and Crime Panel on 24th January 2022, in accordance with Schedule 1 9 (1) Police Reform and Social Responsibility Act 2011. The Panel reviewed his appointed and subsequently made a positive recommendation to the PCC in support of his appointment.

3.8 JASP members will note that that proposal has the effect of creating a temporary Joint CFO arrangement between the PCC, and CC Guildford, to ensure continuity in provision of a statutory CFO in the OPCC, and the operational effectiveness of Nottinghamshire Police.

3.9 It is proposed that a Joint Chief Finance Officer Protocol (JCFO), at Appendix 1, be used alongside the risk mitigations that are detailed at para 4.3 for the period that a JCFO arrangement is in place.

3.10 The JCFO enables both the PCC, and CC, to request additional independent advice in circumstances where it is perceived that the advice from the JCFO may be subject to perceived or real conflict of interest.

3.11 All advice of a financial nature provided to the PCC by the JCFO should, as a matter of course, be considered by the PCC's Chief Executive, and similarly by the Chief's Deputy CFO (as detailed at 5.1).

3.12 JASP are advised to note that there are three potential reasons identified which might in the future lead to a need to consider changing the current position, if it were to continue:

a) future legislation could remove the opportunity to have a JCFO (there is presently no indication that such legislation is forthcoming);
b) if the current post-holder were to leave, due to the level of trust, skill set in maintaining an ethical separation, and corporate memory, all of which helps to facilitate the post's effective operation (there is presently no indication that the JCFO is planning to do this); and,
c) any future growth in the PCC's governance responsibilities, interest and influence. This may include other areas within the Criminal Justice System, or with other blue light services. A natural consequence would be an increased volume of budget and commissioning responsibilities, and as such, the likelihood of potential conflict of interests between the Constabulary and PCC in financial decision-making would be greater. The government has announced the publication of a white paper to be published this year concerning PCC responsibilities to adopt Fire Governance, as exists in some PFCC offices already. The JCFO role may need to be revisited prior to the annual review once the detail of any consultation is known and what policy decisions are made by government and the PCC.

3.13 If any of the above scenarios were to arise in the period of the JCFO arrangements, the existing JCFO would be consulted by the PCC, Chief Constable and Chief Executive over any changes.

3.14 In the meantime, the PCC, Chief Constable and Chief Executive support a JCFO arrangement, and JASP is recommended to endorse this view.

4. Summary of Key Points

Risk management policy and process

4.1 JASP members are invited to note that there is an elevated corporate risk presented by temporarily combining the two CFO posts and designating a single officer, as described in pages 19-20 of 'The Role of CFOs in Policing,' Chartered Institute of Public Finance and Accountancy (CIPFA) guidance, March 2021. It should be noted that benefits can also be offered through Joint CFO arrangements, and that this is considered pragmatic at the present time.

4.2 This arrangement does not give rise to any contravention of the provisions of the PRSRA 2011, and there will a cost saving benefit in the short-term. However, while the PCC presently embraces the interim benefits provided through the Joint CFO and is grateful for the CC's support, this is not her preferred configuration for fulfilment of the OPCC CFO role beyond the short-term statutory need. It is her intention to recruit into a separate distinct role for the OPCC, and the advert for that post was published on 14th February 2022.

4.3 In recognition of the corporate risk posed through the Joint CFO role, the PCC requested that her CEO formally advised the Chair of the Joint Audit Committee of the temporary establishment of the role, and of the governance risks presented through the combined CFO post. To mitigate these risks, the PCC also requested that appropriate safeguards be put in place, including:

- The appointment of a deputy CFO within Nottinghamshire Police;
- The development of a Joint Protocol between the PCC and the Chief Constable to establish a control framework, referencing the Policing Protocol Order 2011, for protecting the impartiality of the CFO's advice to the two corporate soles, and to navigate any areas of conflict appropriately;
- Review of the Joint Code of Corporate Governance; and,
- Review of the role profile of the CFO, to ensure its adherence with the five CFO principles set out by CIPFA, and ethical behaviour including:
    - Requesting a review by JASP to ensure that the CFO is not subject to undue pressure by either myself or the CC;
    - Taking assurances from Internal and External Audit, as well as advice from Majesty's Inspectorate of Constabulary and Fire and Rescue Services in respect of specific issues; and,
    - Commissioning a peer review from Durham Constabulary's Assistant Chief Officer (S151 officer) to provide advice on the financial management and efficiency of both corporate soles, including how information and assurance is provided to the PCC, and the process for risk management and dispute resolution.

4.4 A further safeguard is available through s36 PRSRA 201, which requires the CC to give all relevant information to the PCC as needed. In ensuring this requirement is fulfilled, the S151 status of the CFO requires him to act in the public interest should he consider that undue pressure is being placed on him to act in a manner which is unprofessional. Internal whistleblowing procedures (Bad Apple) are in place to protect the CFO in this regard. Section 114 of the Local Government Finance Act 1998 requires the Section 151 Officer to issue a report if there is likely to be unlawful expenditure or an unbalanced budget.

5. Financial Implications and Budget Provision

5.1 The agreement that has been developed between my Office and CC Guildford sets out the terms and conditions of his temporary appointment, which includes:

- Remunerating Mr Kimberley for additional work undertaken to fulfil a temporary full-time joint CFO role, paid at the rate for the OPCC CFO,

top of grade, and uplifted by 10% for combined duties undertaken. The top up to his existing salary will be recharged to the OPCC;

- Remunerating an internal Nottinghamshire Police appointee, Mr Danny Baker for addition duties undertaken temporarily to fulfil the role of Deputy CFO, at one full grade above his existing salary to account for the additional responsibility. The top up to his existing salary will be recharged to the OPCC;
- Payment of an honorarium each month to Chief Accountant Maria Fox for additional work undertaken by her to support the above-mentioned temporary arrangements; and,
- Payment of additional monies towards the cost of an internal Nottinghamshire Police appointment to temporarily act up to Head of Transport to cover Mr Kimberley's abstraction into a joint CFO role for the two corporate soles.

6. Human Resources Implications

6.1 In accordance with Schedule 1 6 PRSRA 2011, the PCC is required to appoint a CFO, who:

- acts as her principal advisor in respect of the financial affairs of her Office;
- manages the totality of the Finance Affairs of her Office in all its dealings;
- is a member of a specified accountancy body;
- reports to internal and external auditors, Joint Audit Committee, and Police and Crime Panel on budget and precept, adequacy of financial reserves, compliance with prudential capital regime, and adherence to financial regulations
- reports on any unlawful expenditure or an unbalanced budget; and,
- maintains effective audit, accounting, and control systems

6.2 Terms and conditions have been formalised in a written arrangement that the PCC has formally agreed with CC Guildford, Mr Kimberley's employer, in respect of the temporary provision of his services.

7. Equality Implications

7.1 The Equality Act 2010 introduced a duty on public authorities to, in the exercise of their functions, have due regard to the need to: eliminate conduct prohibited by the EA 2010, such as discrimination, harassment and victimisation related to an individual's protected characteristics; and, to advance equality of opportunity and foster good relationships between people in carrying out their activities.

7.2 The appointment of a CFO will ensure that the discharge of my Office's functions is lawful and fulfils my duties under EA 2010.

8. Risk Management

8.1 As noted at paragraph 3.2, the law does not permit me to have a gap in Chief Finance Officer provision. This temporary appointment mitigates against any breach of the requirement at Schedule 1 7 (1) PRSRA 2011. The statutory appointment of a Chief Finance Officer creates provision for management of risk within my Office and in the discharge of its functions.

8.2 However, the appointment of Mr Kimberley as temporary CFO for both myself and the CC does create corporate risk, as noted at paragraph 4.1. Mitigations against the identified risks arising from joint CFO provision have been detailed in paragraphs 4.2-4.4.

9. Policy Implications and links to the Police and Crime Plan Priorities

9.1 The appointment of temporary Chief Finance Officer will ensure that the staff within my Office discharge its functions in accordance with the PRSRA 2011.

9.2 This appointment will also ensure that the delivery of the priorities within my Police and Crime Plan are appropriately costed and budgeted for.

10. Changes in Legislation or other Legal Considerations

10.1 As noted at paragraph 3.2, the law does not permit me to have a gap in Chief Finance Officer provision. The proposal of this temporary appointment will mitigate against any breach of the requirement at Schedule 1 7 (1) PRSRA 2011.

11. Details of outcome of consultation

11.1 None – for information only.

12. Appendices

12.1 **Appendix 1** – Joint CFO Protocol.

Appendix 1

JOINT CHIEF FINANCE OFFICER
Safeguards Protocol

Introduction

1. This document has been produced by the Nottinghamshire Office of Police and Crime Commissioner (OPCC) to give assurance to the Joint Audit and Scrutiny Panel (JASP), and the public, about the role of the Joint Chief Finance Officer (JCFO).

2. The Police and Crime Commissioner (PCC) receives the Police Grant from the Home Office and is responsible for setting the police budget and holding the Constabulary to account. Her Chief Finance Officer is responsible for advising her on those processes.

3. A conflict of interest could arise if her Chief Finance Officer, and the Constabulary's Chief Finance Officer, is the same person. However, there are also potential benefits, and this is the arrangement that the PCC has chosen for a temporary period, in order to be compliant with the requirement as set out by Sch 1 7 (1) Police Reform and Social Responsibility Act 2011. As such, the PCC's office has put in place safeguards to manage the risk of conflict of interest with the Chief Finance Officer. This document sets out those safeguards.

Rationale for Arrangement

4. The PCC's primary responsibility is to secure the maintenance of an effective and efficient police force. She has established the role of Joint Chief Finance Officer (JCFO) to assist her. The joint role brings ongoing financial and operational benefits, including:

    - More effective, streamlined decision making;
    - The provision of consistent expert advice;
    - Reduced costs, by having one full time equivalent member of staff fulfil both roles.

5. The Chief Finance Officer is also the Section 151 Officer (cf. Local Government Act 1972) for both the PCC and the Chief Constable, responsible for the proper administration of their financial affairs.

Risk and Mitigation

6. The PCC's Chief Finance Officer might face a conflict of interest because he is also the Chief Finance Officer to the Chief Constable. The most obvious theoretical manifestation of this would be an inability to provide independent advice, particularly on holding the Chief Constable to account on financial matters.

7. In looking to mitigate the impact of this risk, the OPCC will (with advice from Internal Audit) ensure a Control Framework is established, in accordance with relevant legislation.

8. The PCC has considered the risk alongside this Control Framework and considers that the benefits outweigh the risks, once the Control Framework is taken into account. Its elements are set out below.

Control Framework

I. The Strategic responsibilities of both the PCC and CC are set out in the Policing Protocol Order 2011. This makes it clear that the PCC is ultimately accountable to the public for the management of the police fund while the CC has day to day responsibility for managing their allocated budgets.

II. The OPCC and Nottinghamshire Police's Code of Corporate Governance will be updated to set out how powers and delegations will be exercised by the JCFO, Chief Executive and the Chief Constable. It acts as an important safeguard and form of assurance for the PCC in preventing the CC from committing expenditure or carrying out certain activity which the PCC may otherwise not wish to be involved in.

III. Job descriptions, as defined within the Code of Corporate Governance, have been developed in accordance with Section 4 of the Home Office Financial Management Code of Practice for the Police Service in England and Wales and are in place for each role.

IV. S36 of the Police Reform and Social Responsibility Act 2011 requires the CC to give all relevant information to the PCC as needed. In ensuring this requirement is fulfilled, the S151 status of the CFO requires him to act in the public interest should he consider that undue pressure is being placed on him to act in a manner which is unprofessional. Internal whistleblowing procedures (Bad Apple) are in place to protect the CFO in this regard. Section 114 of the Local Government Finance Act 1998 requires the Section 151 Officer to issue a report if there is likely to be unlawful expenditure or an unbalanced budget.

V. In addition to the legislative requirements identified above, the "Role of the Chief Financial Officer in Local Government", a publication by the Chartered Institute of Public Finance and Accountancy outlines five principles which the Joint CFO as a professionally qualified Accountant should adhere to. All of the principles within the document are underpinned by the need for the JCFO to act ethically i.e., with integrity, objectivity, professional competence and due care, confidentiality, with professional behaviour and with impartiality.

VI. The CFO is employed by the CC. Work undertaken for the PCC is delivered through an agreement for the provision of services, reporting through the Chief Executive. This means that advice from the CFO to the PCC can be checked and challenged by the Chief Executive before it reaches the PCC – and the PCC can be provided with additional advice if necessary.

VII. The PCC intends to transform its governance relationship with the Chief Constable and Nottinghamshire Police in accordance with the emerging outcomes of the Home Office Review into PCCs, which it is expected will

require greater transparency, visibility, and accountability. It is expected that finance will be a standing item on the PCC's monthly accountability board agenda (formal title to be confirmed). The membership of that group will be defined in a terms of reference and it will include the statutory officers: PCC, CC, Chief Executive and CFO, as well as the Deputy CC, Head of Legal, Head of Estates, Head of Commissioning, and Head of Strategy and Performance as a minimum.

VIII. A written report will be presented by the JCFO, outlining the current and future financial position of both the PCC and CC along with any necessary decisions and actions that need to be made. This ensures transparent and comprehensive discussion prior to any novel, contentious or repercussive decisions being taken. All decisions taken will be formally recorded and published in line with the PCC's transparency obligations.

IX. A Dispute Resolution Process using Informal and Formal Mediation will be put in place to provide additional support to the PCC in holding the CC to account. In addition to the various internal controls outlined above, the PCC or CC can request external advice from a third party, such as another PCC/CC CFO, should they not be satisfied with the advice that they have received from the JCFO. Alternatively, they could request advice from HMICFRS. Under S54 of the Police Act 1996, a PCC can request HMICFRS carry out an inspection on any aspect of the force's operations, including obtaining information.

X. The PCC can access Internal Audit to confirm that checks and balances exist to ensure high standards of governance and adequate risk management is in place. Similarly, they can take assurance from External Audit in ensuring overall financial probity as auditors of both the PCC and CC. They could also be used to offer an external opinion should the PCC or CC be concerned as to any lack of transparency or independence by the JCFO.

XI. At any point, either the PCC, CC or JCFO can terminate this agreement. This would result in the PCC needing to appoint another CFO, which the Chief Executive would advise him on. It is presently the PCC's intention to recruit a distinct OPCC CFO.

9. Three potential reasons have been identified which could lead to a change in the current position:

a) future legislation could remove the opportunity to have a JCFO (there is presently no indication that such legislation is forthcoming);
b) if the current post-holder were to leave, due to the level of trust, skill set in maintaining an ethical separation, and corporate memory, all of which helps to facilitate the post's effective operation (there is no indication at present that there is any risk of this occurring); and,
c) Any future growth in the PCC's governance responsibilities, interest and influence. This may include other areas within the Criminal Justice System, or with other blue light services. A natural consequence would be an increased volume of budget and commissioning responsibilities, and as

such, the likelihood of potential conflict of interests between the Constabulary and PCC in financial decision-making would be greater.

Contact information

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