



Office of the Comptroller and Auditor General

Governance of the States of Jersey Police

22 March 2018



JERSEY AUDIT OFFICE

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Governance of the States of Jersey Police

Introduction

- 1.1 The States of Jersey Police, headed by the Chief of Police, provides policing services to the Island. Following the coming into force of the States of Jersey Police Force Law 2012, it has been subject to oversight by a Police Authority comprising:
 - a Chairman appointed by the Minister;
 - four independent members appointed by the Chairman and the Minister; and
 - two members of the States Assembly appointed by the States Assembly.
- 1.2 The governance of police services is inherently complex. Police forces are accountable for the delivery of economic, efficient and effective policing services but there is also a widely accepted imperative that they are operationally independent of government.
- 1.3 Given this need for operational independence, legislative and administrative arrangements have developed in different jurisdictions to recognise the distinct nature of police services. In a number of jurisdictions a corporate body (a 'Police Authority') or an individual (a 'Police and Crime Commissioner') provides a buffer between government and the police force and reinforces operational independence and accountability of the police force.
- 1.4 Various functions in respect of the States of Jersey Police are split between the Chief of Police, the Police Authority, the Minister, the States Employment Board and others. The allocation of responsibilities does not exactly mirror that found elsewhere in the United Kingdom.
- 1.5 It is a good time to take stock of the arrangements established in Jersey as a result of the 2012 Law:
 - there has been sufficient experience of the new arrangements in practice; and
 - there is the opportunity to draw on the insights of both the former Chief of Police and former Chairman of the Authority as well as those of their successors.

Objectives and scope of the review

- 1.6 The review has evaluated the effectiveness of the design and operation of the current governance arrangements for the States of Jersey Police.
- 1.7 The review has:
 - considered the overall arrangements for the governance of the States of Jersey Police; and

- focussed on two specific areas:
 - one relating to a human resources issue; and
 - one relating to the development of the Medium Term Financial Plan.

These areas are considered in turn below.

1.8 The review has not extended to:

- arrangements entirely internal to the States of Jersey Police Force;
- the police complaints process;
- the governance arrangements for the honorary police; and
- the merits of individual decisions.

Overall arrangements

2.1 I welcome the establishment of a Police Authority as a valuable enhancement to the governance arrangements for the States of Jersey Police, a step not taken in any other Crown Dependency or Overseas Territory. A Police Authority:

- strengthens the safeguards of the operational independence of the States of Jersey Police; and
- enhances scrutiny and accountability.

Current allocation of functions

2.2 A selective summary of the complex allocation of responsibilities in place since the establishment of the Police Authority is set out in Exhibit 1. To preserve police operational independence, the Chief of Police has command, direction and control of the States of Jersey Police; the Police Authority has limited powers over the Chief of Police. As Accounting Officer, the Chief of Police is personally responsible for the proper financial management of the States of Jersey Police.

Exhibit 1: Allocation of functions in respect of the States of Jersey Police (SoJP)

Responsible body or person	Following consultation with	With the approval of	Duty or power
Minister for Home Affairs			Overall and ultimate responsibility for the functioning of the SoJP Ensuring that the Police Authority carries out its functions effectively Determining the ranks of the SoJP and numbers in each rank Removal of members of the Police Authority in certain circumstances Requiring the Police Authority to report to the Minister on any matter relating to the SoJP Directing the Police Authority to submit the SoJP to an external inspection Directing the Police Authority to ensure that the SoJP takes appropriate action in response to an inspection finding Respecting the independence of the SoJP Laying the approved Policing Plan before the States Assembly
Minister for Home Affairs	Police Authority		Appointment of the Chief of Police and Deputy Chief of Police

Responsible body or person	Following consultation with	With the approval of	Duty or power
Minister for Home Affairs	Police Authority and Chief of Police		<p>Setting policies in relation to key aims and objectives of the SoJP</p> <p>Setting management policies in areas that may impact on the SoJP's reputation or the reputation of Jersey</p> <p>Amending the Annual Policing Plan prepared by the Police Authority</p>
Minister for Home Affairs	States Employment Board (SEB)		Making an Order establishing the arrangements for appointment and promotion of police officers
Minister for Home Affairs	Police Authority, Chief of Police and Police Association		Making an Order establishing arrangements for governance and administration of the SoJP
Police Authority			<p>Ensuring that the SoJP:</p> <ul style="list-style-type: none"> is an efficient and effective police force delivers its key aims and objectives within the resources available acts in accordance with any management policies set by the Minister <p>Seeking from the Minister any additional resources needed for the SoJP to deliver its key aims and objectives</p> <p>Respecting the independence of the SoJP</p> <p>Submitting an Annual Policing Report to the Minister</p>
Police Authority	Chief of Police		Preparing an Annual Policing Plan and presenting it to the Minister
Chief of Police			<p>Having command, direction and control of the SoJP</p> <p>Giving effect to policies set by the Minister and the Annual Policing Plan</p> <p>Serving as Accounting Officer for the SoJP under the Public Finances (Jersey) Law 2005 personally responsible for the proper financial management of resources allocated to the SoJP</p> <p>Complying with Financial Directions</p> <p>Being accountable to the Police Authority for:</p> <ul style="list-style-type: none"> administration, governance and business of the SoJP discipline and organisation of its officers training of and succession planning for police officers <p>Providing facts on policing matter to the Minister or Police Authority if requested</p>

Responsible body or person	Following consultation with	With the approval of	Duty or power
Chief of Police		Minister for Home Affairs	Agreeing that a police force or law enforcement agency elsewhere in the British Isles makes persons available to the SoJP Agreeing to make SoJP officers available to a police force elsewhere in the British Isles Charging for the provision of police services as permitted by Regulations
States Employment Board			Determining and communicating terms and conditions of police officers
Treasurer of the States		Minister for Treasury and Resources	Issuing Financial Directions

2.3 At an administrative level:

- the Chief of Police is line managed by the Chief Executive of the States; and
- the Minister for Home Affairs is normally advised by the Chief of Police on operational policing matters and the Chief Officer of the Community and Constitutional Affairs Department in respect of criminal justice policy issues. There are some areas where both might advise, such as those relating to the relationship of the Minister with the States of Jersey Police.

Analysis

2.4 The Police Authority in Jersey has significantly more limited resources than comparable bodies in larger jurisdictions:

- it had a budget of approximately £64,000 in 2017 to cover the cost of one employee, the cost of accommodation and incidental expenditure;
- it is heavily dependent on information provided to it by the Chief of Police; and
- it does not have access to routine independent inspection reports that are a valuable source of independent appraisal of the performance of police forces and an important means of driving improvement. Throughout the United Kingdom and Ireland there are established inspectorates with routine work programmes. In Jersey, no such routine inspection is undertaken. The Minister is empowered to direct the Police Authority to secure that an inspection is undertaken but any inspection would require additional funding. Her Majesty's Inspectorate of Constabulary undertook an inspection of the States of Jersey Police in 2006 but no wide-ranging inspection has been undertaken subsequently. I recognise that peer reviews of aspects of the States of Jersey Police's work have been undertaken since 2006. These reports are useful and they are shared with the Police Authority but they are not a substitute for periodic independent inspection.

- 2.5 The Police Authority is heavily dependent on the skills and expertise of its members for whom there is very limited training and support to discharge their functions. Ensuring that members of the Police Authority have the right skills, training and support is important to secure maximum value from their work.
- 2.6 I also note that the practice of the States Assembly electing members of the Police Authority from amongst its own membership is inconsistent with the practice in both Scotland and Ireland. Indeed, to reinforce the operational independence of the police service, there is statutory prohibition on serving members of the legislature sitting on the Scottish Police Authority and Irish Policing Authority respectively.
- 2.7 Despite the limited resources available to the Police Authority and its limited powers, the high level statutory duties imposed on the Police Authority are more demanding than those of comparable bodies in larger jurisdictions (see Exhibit 2). It has a responsibility for **ensuring** delivery of economic and effective policing and delivery of the aims and objectives of the States of Jersey Police. Given its resources and powers it cannot - and cannot reasonably be expected to - do so. The focus on oversight and promotion of improvement reflected in some other legislation, such as that for the Scottish Police Authority, would provide a clearer and more appropriate framework for Jersey.

Exhibit 2: Comparison of the responsibilities of police authorities

Body	Responsibilities
<p>Jersey Police Authority</p>	<p>‘ensuring that the States of Jersey Police Force -</p> <p>(a) is an efficient and effective police force;</p> <p>(b) delivers the key aims and objectives [...] within the resources available; and</p> <p>(c) acts in accordance with any management policies [set by the Minister]’</p>
<p>Police and Crime Commissioners in England and Wales</p>	<p>‘The police and crime commissioner for a police area must -</p> <p>(a) secure the maintenance of the police force for that area, and</p> <p>(b) secure that the police force is efficient and effective.’</p> <p>‘The police and crime commissioner for a police area must hold the relevant chief constable to account for the exercise of -</p> <p>(a) the functions of the chief constable, and</p> <p>(b) the functions of persons under the direction and control of the chief constable.’</p>

Body	Responsibilities
Scottish Police Authority	'(a) to maintain the Police Service, (b) to promote the policing principles [...], (c) to promote and support continuous improvement in the policing of Scotland, (d) to keep under review the policing of Scotland, (e) to hold the chief constable to account for the policing of Scotland [...]'
Policing Authority in Ireland	'the Authority shall - (a) oversee the performance by the Garda Síochána of its functions relating to policing services, [...] (i) provide information and advice to the Minister with regard to matters relating to policing services, (j) promote and support the continuous improvement of policing in the State'

Sources: States of Jersey Police Force Law 2012; Police Reform and Social Responsibility Act 2011; Police and Fire Reform (Scotland) Act 2011; Garda Síochána Act 2005

2.8 Review of the relevant legislation also identifies that in Jersey the powers of Ministers are more extensive than in other jurisdictions reviewed, giving rise to a perceived threat to operational independence of the States of Jersey Police:

- there is a role for the Minister in some areas where no corresponding role would exist in other jurisdictions in the British Isles. For example, although the consent of the Minister would be required for a States of Jersey Police officer to serve with a United Kingdom police force, no such Ministerial approval would be required for service of a Scottish police officer elsewhere in the United Kingdom (or in Jersey); and
- the Minister has wider powers in some areas than for other forces in the British Isles. For example, the Minister determines the numbers of each junior rank that may be appointed. In my view this is a highly operational matter and it is inappropriate for the Minister to retain this power.

2.9 I also note that:

- the Minister may require the Police Authority to report to them on any matter concerning the States of Jersey Police. In my view this is a very broad power that could potentially threaten the independence of the States of Jersey Police;
- despite the requirement for a close working relationship between the Chief of Police and the Deputy Chief of Police, there is no requirement for consultation with the Chief of Police on the appointment of the Deputy Chief of Police;

- there is no statutory basis and no documented framework for line management of the Chief of Police by the Chief Executive. Such a model is not adopted in either Scotland or Ireland and could be seen as a threat to operational independence; and
- the complex non-statutory relationship between the Chief Executive, Minister for Home Affairs, Chief Officer of the Department of Community and Constitutional Affairs and the Chief of Police is not documented, increasing the risk of confusion and dispute.

2.10 In England and Wales, there is a statutory power for Police and Crime Commissioners to assume the responsibilities of a Fire and Rescue Authority, providing oversight of the Fire and Rescue Service. Although the context in Jersey is different in scale and nature, there is a strong case for extending the remit of the Police Authority to other services where operational independence is important.

Recommendations

- R1** Enhance the resources available to the Police Authority to discharge its functions, including by establishing and implementing a routine frequency for independent inspections of the States of Jersey Police.
- R2** Enhance the training and support available to members of the Police Authority to enhance their ability to discharge their responsibilities.
- R3** Review whether it remains appropriate for the States Assembly to elect two members of the Police Authority.
- R4** Develop proposals to amend the statutory duties of the Police Authority to ensure that they are focussed on oversight and improvement.
- R5** In light of experience of the operation of the States of Jersey Police Force Law 2012 and the practice in other jurisdictions, develop proposals to amend legislation relating to the allocation of powers and duties to reinforce further the operational independence of the States of Jersey Police.
- R6** Establish and document revised non-statutory arrangements relating to the governance of the States of Jersey Police, including:
- ending the current arrangement of the Chief Executive serving as line manager for the Chief of Police; and
 - enhancing the role of the Police Authority.
- R7** Evaluate whether the role of the Police Authority could be extended to cover other services where operational independence is important.

Human resources

- 3.1 In common with other jurisdictions, police officers have a special legal status: they are not employees and are subject to their own disciplinary procedures and their own terms and conditions. The States Employment Board, the statutory employer of all States employees, has a duty to determine and communicate the terms and conditions of police officers.
- 3.2 One issue arose in 2016 that related to the respective responsibilities of different parties in relation to a human resources matter - the extension of the service of an individual police officer beyond his normal retirement date. In this case the Chief of Police had determined that, in light of his own plans for the future of the States of Jersey Police, he would not approve such an extension but the Minister for Home Affairs determined that such an extension should be granted. The legal advice subsequently received was that the Minister had such a power.
- 3.3 My review focussed on the arrangements in place for this decision and I have identified a number of areas where I believe that there was scope for improvement in the arrangements in place:
- **the respective responsibilities of the different parties were not clear to all participants and legal advice on those responsibilities was obtained at a relatively late stage in the process.** In my view the allocation of responsibilities in such a situation should be clearly understood by all the parties concerned and reflected in documented operating arrangements;
 - **following the coming into force of the States of Jersey Police Force Law 2012, the States Employment Board did not update the Police Terms and Conditions of Service to reflect the updated legislation.** Given the statutory duty of the States Employment Board, the need for such an update should have been identified by the States officers supporting the Board and appropriate arrangements put in place. Indeed, there appeared to be confusion concerning the responsibility for maintaining the Terms and Conditions of Service and I was unable to secure evidence of the adoption of the Terms and Conditions by the States Employment Board;
 - **the Minister for Home Affairs was not presented with a report detailing the options available to the Minister and relevant factors to take into account in making the decision.** Instead officers prepared a draft decision that endorsed the position taken by the States of Jersey Police. In my view, where there is a range of potential outcomes, good decision making is supported by providing the Minister with an appropriate analysis of the options and their relative merits; and
 - **the Minister's decision was communicated in a letter rather than in the normal Ministerial Decision template.** Whilst this did not invalidate the decision, and the decision letter gave the grounds for the decision, it meant that the decision was not recorded in the standard format and held centrally with other ministerial decisions.

- 3.4 There is a more fundamental question as to whether granting such a power to the Minister, rather than the Chief of Police, was the most appropriate arrangement to secure the operational independence of the States of Jersey Police. In other jurisdictions, human resources issues (other than in respect of the most senior officers) are more commonly a matter for the Chief of Police with, in some instances, a role for the Police Authority. For example, in Scotland, the Police Authority has the right to require a senior police officer to resign or retire in the interests of the efficiency of the service with a role for Ministers only in the case of the Chief Constable.

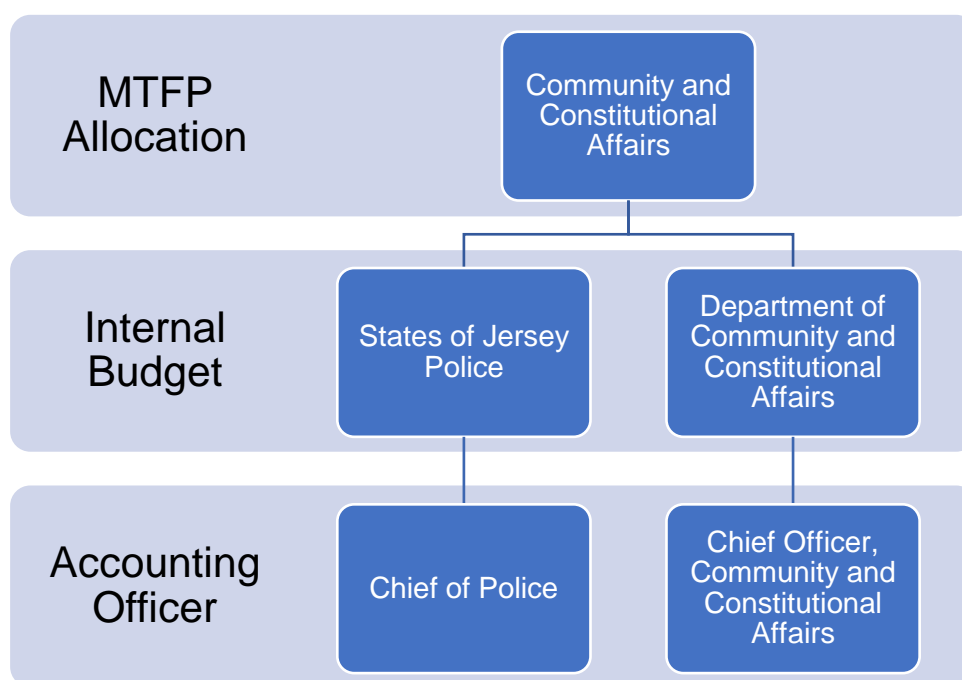
Recommendations

- R8** Ensure that internal operating procedures clearly document the respective roles of different parties for police human resources issues.
- R9** Routinely review and update the Police Terms and Conditions of Service in response to changes in legislation.
- R10** Where another department advises a Minister, involve the lead department for a ministerial portfolio to ensure that:
- where Ministers are asked to exercise statutory powers, civil servants prepare written advice weighing the advantages and disadvantages of different options; and
 - all Ministerial Decisions are properly recorded using the standard template and are centrally held.
- R11** To reinforce the operational independence of the States of Jersey Police, bring forward proposals to amend legislation to reassign human resources responsibilities from the Minister for Home Affairs to the Chief of Police and Police Authority.

Finance

- 4.1 Effective financial management promotes accountability and is a key means by which bodies secure value for money. In my *Review of Financial Management* (April 2015) and my *Review of Financial Management – Part 2* (February 2016), I reported on strategic and operational elements of financial management across the States. The major findings from those reviews apply to the States of Jersey Police. The States of Jersey Police’s own risk register recognises the risk of poor decision making as a result of poor financial management practices and processes.
- 4.2 The key financial planning process in Jersey is the preparation of the Medium Term Financial Plan (MTFP) that allocates resources for the period that it covers. The MTFP is required to specify for each department the revenue allocation for each year that the MTFP covers.
- 4.3 The MTFP treats the States of Jersey Police as part of the Department of Community and Constitutional Affairs. One revenue allocation covers the States of Jersey Police and the other activities of the Department. However:
- the development of the MTFP does lead to the establishment of planned revenue expenditure budgets for the States of Jersey Police although these are not separately presented in the MTFP; and
 - as a result of a specific statutory provision, the Chief of Police serves as an Accounting Officer with personal responsibility for ‘proper financial management of the resources’ of the States of Jersey Police in accordance with legislation, including ensuring that expenditure does not exceed the amount appropriated to it by the States Assembly. The Chief Officer of the Department of Community and Constitutional Affairs serves as Accounting Officer in respect of other activities of the Department.
- 4.4 The arrangements are summarised in Exhibit 3.

Exhibit 3: Financial Accountability of the States of Jersey Police



4.5 The allocation of resources is inevitably a contentious area and ultimately there are political decisions about relative priorities. However, financial allocations have an impact on the ability of the States of Jersey Police to deliver its responsibilities. Transparency of resources allocated by the legislature and accountability to the legislature for the use of those resources is paramount.

4.6 I note that:

- although the States Assembly has taken the view that it is appropriate that the Chief of Police is personally responsible for the financial management of the States of Jersey Police, it does not approve a separate allocation for the States of Jersey Police as part of the MTFP process. There is therefore a weakness in the arrangements for accountability for funds voted by the States Assembly;
- although the Police Authority has a statutory duty to seek from the Minister additional resources where it considers these necessary to enable the States of Jersey Police to deliver the key aims and objectives set by the Minister, it has no routine role in the budget setting process and its power is effectively a reserve power. In my view the Police Authority, through its oversight of the States of Jersey Police, would be in a strong position routinely to advise Ministers on the implications of proposed financial allocations on the ability of the States of Jersey Police to discharge its responsibilities;
- although the Police Authority has a statutory duty to prepare an Annual Policing Plan, it has no routine input into setting the budget for the States of Jersey Police. Responsibilities for service and financial planning are therefore not aligned; and

- although the Police Authority has a statutory duty, following consultation with the Chief of Police, to prepare an Annual Policing Plan, there is no corresponding duty to prepare a multi-year service plan. Given the adoption of multi-year financial planning through the MTFP, there is a compelling reason for service planning to mirror that multi-year horizon.

Recommendations

- R12** Separately identify the resources allocated to the States of Jersey Police in the Medium Term Financial Plan.
- R13** Give the Police Authority a routine role in advising Ministers in respect of the budget for the States of Jersey Police.
- R14** Align service and financial planning for the States of Jersey Police by moving to a multi-year Policing Plan.

Conclusion

- 5.1 The establishment of a Police Authority four years ago was a welcome step, strengthening the oversight of and enhancing the operational independence of the States of Jersey Police. Given the recent changes in key personnel now is a good time to look again at the effectiveness of arrangements.
- 5.2 In my view, it is timely to take further steps to enhance the accountability and operational independence of the States of Jersey Police by:
- strengthening the resources of the Police Authority;
 - committing to routine independent inspection as a key mechanism for holding the States of Jersey Police to account and driving improvement;
 - developing the skills and capacity of members of the Police Authority;
 - clarifying the overarching responsibilities of the Police Authority;
 - changing the allocation of responsibilities between the Police Authority, the Minister and the Chief of Police; and
 - establishing and documenting revised non-statutory arrangements for the governance of the States of Jersey Police, including replacing the role of the Chief Executive as line manager of the Chief of Police and enhancing the role of the Police Authority.
- 5.3 In relation to human resources matters, I have identified the opportunity to reinforce the operational independence of the States of Jersey Police by reassigning various functions from the Minister to the Chief of Police and Police Authority. I have also made recommendations on more operational human resources matters.
- 5.4 I have reported previously on the need to improve financial management across the States and I have not therefore repeated those findings in this report. The Chief Executive has instigated a review of this area and I understand that my recommendations are being picked up as part of that review. I have, however, identified a fundamental weakness in accountability arrangements for the use of resources by the States of Jersey Police. I have therefore recommended that the revenue allocation to the States of Jersey Police is identified separately in the Medium Term Financial Plan.
- 5.5 Finally, there is an opportunity to consider whether the remit of the Police Authority should be expanded to provide a cost effective basis for oversight of other services, such as other uniformed services where operational independence is important. I am considering whether to review arrangements for such services in the future.

Appendix 1 – Summary of Recommendations

Overall arrangements

- R1** Enhance the resources available to the Police Authority to discharge its functions, including by establishing and implementing a routine frequency for independent inspections of the States of Jersey Police.
- R2** Enhance the training and support available to members of the Police Authority to enhance their ability to discharge their responsibilities.
- R3** Review whether it remains appropriate for the States Assembly to elect two members of the Police Authority.
- R4** Develop proposals to amend the statutory duties of the Police Authority to ensure that they are focussed on oversight and improvement.
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 - enhancing the role of the Police Authority.
- R7** Evaluate whether the role of the Police Authority could be extended to cover other services where operational independence is important.

Human resources

- R8** Ensure that internal operating procedures clearly document the respective roles of different parties for police human resources issues.
- R9** Routinely review and update the Police Terms and Conditions of Service in response to changes in legislation.
- R10** Where another department advises a Minister, involve the lead department for a ministerial portfolio to ensure that:
- where Ministers are asked to exercise statutory powers, civil servants prepare written advice weighing the advantages and disadvantages of different options; and
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Finance

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- R13** Give the Police Authority a routine role in advising Ministers in respect of the budget for the States of Jersey Police.
- R14** Align service and financial planning for the States of Jersey Police by moving to a multi-year Policing Plan.



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