




The Office of Constable

The bedrock of modern
day British policing

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“ Every constable is an independent legal entity; the public’s guarantee of impartiality. Officers of the crown operate independent of undue influence, interference and with a **personal responsibility** which requires a unique type of person and commitment.

Foreword

Every officer I know is immensely proud to hold the Office of Constable which lies at the heart of our unique police service.

It encompasses so much: in terms of the expectations, legal status and the responsibilities of the powers that are attributed to every officer who holds it.

And while it is an immense privilege to hold the Office of Constable, with that comes great responsibility and restrictions on professional and private lives.



Police officers perform their duties to the highest of standards and with integrity, often under intense scrutiny. It is these high standards which ensure British policing is much admired internationally. Many countries want to emulate the British model which has taken decades to establish.

With increasing demands and reduced officer numbers, extreme cuts have taken its toll on the service but it is testimony to the hard work and dedication of officers throughout the country that the finest, long held traditions of the Office of Constable has not been eroded. The Office of Constable works. It brings with it pride, unity and a commitment to serve. **It is about integrity, impartiality, accountability and most importantly, political independence.** Above all else it puts the safety and security of the public first.

It is a commendable and admirable Office and one which my colleagues and I are extremely proud to hold.

John Apter, National Chair, Police Federation of England and Wales

What is the Office of Constable?

Every sworn police officer in England and Wales is a Constable, irrespective of rank. It is from the Office of Constable that each officer derives their powers.

On appointment each police officer makes a declaration to “faithfully discharge the duties of the Office of Constable.” In England and Wales, police officers swear an of allegiance to the monarch; this is to ensure the separation of power and political independence of the Office of Constable.

The Office of Constable means a police officer has the additional legal powers of arrest and control of the public given to him or her directly by a sworn oath and warrant. These are not delegated powers simply

because they have been employed as an officer and officers are not employees, they are not agents of the police force, police authority or government. Those who hold the Office of Constable are servants of the Crown.

Each sworn constable is an independent legal official and each police officer has personal liability for their actions or inaction. The chief officer of the force to which the constable is attached also has a level of corporate responsibility.

Police officers have access to most statutory employment rights afforded to employees, but it is a criminal offence for police officers to take industrial action.



Swearing allegiance to the Crown

In England and Wales those who decide to become police officers take an oath at the point of becoming a constable. The oath, or attestation, is set within the legislation of this country, and is as follows:



"I do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law."

The strengths of the Office of Constable

Police officers must be allowed to police with discretion. Discretion is the bedrock of policing; it allows reasoned and fair decisions based on experience to be taken by police officers without the need to take a course of action merely to satisfy targets.

Police officers cannot legally be instructed to arrest a person. It is a decision they must take for themselves, using their experience, knowledge and discretion to take the most appropriate course of action to fulfil their function as officers of the Crown.

Police officers have authority under the Crown for the protection of life and property, maintenance of order, prevention and detection of crime and prosecution of offenders against the peace. With the imposition of central and politically set targets there are dangers that officers' discretion and operational independence is being compromised.

Police officers must be apolitical, impartial and accountable for their actions. If not, how and what we police will become subject to political whim and electioneering. The operational independence of our police service comes with the Office of Constable.

The Office of Constable ensures the integrity, impartiality and accountability of operational policing. If we value the rule of law, we must protect the Office of Constable and ensure forces have the ability to train officers to be apolitical, impartial, independent and accountable.

Police officers must gain a foundation of knowledge and experience in the execution of duty according to the rule of law, the use of authority and discretion, core skills and the practicalities and reality of policing.

Government must provide the resources to ensure sufficient numbers of multi-skilled sworn officers that can be called upon whatever the demands.

The government should, as a matter of urgency, undertake a full, independent and holistic review of policing examining role, structure, governance, function and accountability. Otherwise there is a genuine fear that the current workforce modernisation programme could destroy the Office of Constable by default.



What it means to hold the Office of Constable

Holding the Office of Constable means a police officer executes their duty independently, without fear or favour.

With the Office of Constable comes personal accountability and responsibility for the protection of life and property, the prevention and detection of crime, the maintenance of law and order and the detection and prosecution of offenders.

Police officers must be allowed to police using common sense, free from political preference and political targets.

The Office of Constable and the rule of law protect this.

The Constable must be at the heart of policing communities, ensuring cohesion and security at a local, national and international level.

Those holding the Office of Constable do so in full knowledge of the increasing dangers they face, the accountability both on and off duty and the restrictions placed on their family lives.

Police officers' terms and conditions are laid out in Police Regulations. There are not many employment rights that police officers don't have that ordinary employees do. However, holding the Office of Constable and being a sworn officer of the Crown does mean there are some restraints upon action that the individual can take.



Restrictions on the private life of a Constable

Unlike ordinary employees, the unique status of the Office of Constable does place some restrictions on the private life of police officers and their families.

These include:

- Abstaining from any activity which is likely to interfere with the impartial discharge of duty, or to give the impression to the public that it may interfere. This can apply to immediate family also.
- Getting permission from the appropriate disciplinary authority for place of residence.
- Not wilfully refusing or neglecting to discharge any lawful debt.
- Not being able to have a business interest without the consent of the appropriate disciplinary authority.
- Abstaining from an 'active' role in any party politics.

Separation of powers

While the rule of law binds our society together, of equal importance is the separation of power, which prevents overconcentration of power in any one institution.

At one level, this reflects the legislature, the executive, the judiciary. In the case of policing, politicians – democratically elected – make the laws, police officers enforce them, and the judiciary decides on the outcome post charge. However, we are each independent and separately accountable. Operational independence is a guiding principle of policing.



How are those who hold the Office of Constable different to employees?

Employment law requires all employees to be 'protected' by a contract of employment.

Constables are not employees.

Police officers' conditions of service are provided by Police Regulations, Police

Conduct Regulations and Police Performance Regulations; many reflect similar provisions to employment law but from a police perspective. The Police (Health & Safety) Act 1997 requires chief officers to provide safe working environments for police officers.

“ When Sir Robert Peel was designing the foundations of our police service, he put at its heart the citizen in uniform, policing by consent with absolute impartiality under the law. While the policing landscape has changed since then, and will doubtless continue to change and face many challenges, we can be justly proud that, thus far, this office of constable has been the beating heart of the British policing model and has underpinned the service we provide to our communities, including allowing chief officers operational independence to make decisions that are right for the safety of the people in their force area, and shoring up our forces' legitimacy through robust accountability.

Chief Constable Sara Thornton – Chair, National Police Chiefs' Council

Can police officers strike?

It is illegal for police officers to take any form of industrial action. As Officers of the Crown, they are bound by the Police Act.

Section 91 of the Police Act provides that a criminal offence will be committed by:

- those who cause, or attempt to cause, amongst members of the police service disaffection, and
- those that induce them to 'withhold their services'.

There would be a breach of Section 91 if anyone were to encourage or promote any of the following:

- strike action
- an overtime ban (including bans on both compulsory and voluntary overtime)
- a 'work to rule' – in effect a withdrawal of goodwill; the incitement to do so might well be viewed as causing disaffection contrary to Section 91.

Can police officers withhold services?

It's been suggested that if officers could withdraw consent to certain activities (such as holding back their Firearms Certificate or Driving Permit), this is something they could be encouraged to do.

However:

- Any incitement to members to do so would probably breach the terms of Section 91 ('causing disaffection', if not inciting members to 'withhold services').
- There is a (albeit limited) risk that such a move (industrial action being unlawful) might leave a member open to claims of misfeasance in public office if their action



- was to lead to, say, injury to a third party.
- Depending on the circumstances the officer and any person encouraging them might incur criminal liability for misconduct in a public office.

The Tripartite Relationship

In England and Wales there exists a tripartite arrangement in policing, which provides checks and balances between the Home Office, police forces and Police and Crime Commissioners. This means that no one part has complete and overall control and power over the others.

The roles of each element of the tripartite arrangement are as follows:

1 The Home Secretary is answerable to Parliament and the public for the provision of an efficient and effective police service. The Home Secretary sets out annual

strategic policing priorities, and a statutory performance framework against which police performance will be measured and compared.

- 2** Chief officers retain overall operational independence. The chief officer is responsible for the direction and control of the force, including civilian staff and delegated financial management.
- 3** PCCs will aim to cut crime and deliver an effective and efficient police service for each of the 41 forces. They will hold the Chief Constable to account for the delivery of the force and will be responsible for setting the force's budget.

“ The Office of Constable is fundamental to our system of politically independent policing by consent. It's enabled the holders to discharge their duties with impartiality and discretion. Communities are policed by members of the community. You can't have greater accountability than that. ”

A brief history of the Office of Constable

In England the office of constable was in existence during Henry I's reign. The principal duty of the constable, which was a military term at this stage, was to command the army.

The term constable first appeared after the Norman conquest, and towards the end of the 12th century acquired the local significance it has held ever since.

The Statute of Westminster 1285 enshrined the principles of two high constables appointed in every hundred with responsibility for suppressing riots and violent crimes and for the arming of the militia to enable them to do so.

The Statute was the only general public measure of any consequence enacted to regulate the policing of the country between the Norman Conquest and *The Metropolitan Police Act 1829*.

By the end of the 13th century the constable acquired two distinct characteristics; the executive agent of the parish and an officer recognised by the Crown for keeping the King's peace.

This system reached its height under the Tudors and progressively disintegrated during the 17th and 18th centuries. Nothing replaced it until the Victorian era.

As more laws were passed to protect property and the person, the Office of Constable became more established.

In 1798, Patrick Colquhoun convinced wealthy merchants to set up and fund a police service in the Port of London. It had



60 salaried officers, with Colquhoun as its superintending magistrate.

Following this, a number of police forces were established:

- The Thames River Police in 1799.
- Royal Irish Constabulary in the first decades of the 19th century by Robert Peel; an armed force whose primary role was the maintenance of order.

Peel's attempts to introduce a similar model in mainland Britain failed.

In the early 18th century, the Bow Street police office, under the chief magistrate, operated a rudimentary police force – most famously the Bow Street Runners of Henry and John Fielding – but they were short-lived because of a lack of Government funding.

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Robert Peel pushed through the *Metropolitan Police Act in 1829* to create the Metropolitan Police, which had just over 1,000 officers.

Peel created a police office under the direction of the Home Secretary. Specifically-appointed magistrates should be in charge of the police, with costs met by the Government and the Metropolitan ratepayers. The Bill was passed with very little debate and no opposition, mainly because the City of London retained its own police.

Peel was determined to establish professional policing in the rest of England and Wales. The Special Constables' Act 1831 allowed JPs to conscript men as special constables to deal with riots.

The outbreak of serious disorder in many towns over Parliamentary reform led to a sudden expansion of provincial policing during the 1830s.

The Municipal Corporations Act 1835 established regular police forces under the

control of new democratic 178 boroughs town councils. Many boroughs simply appointed the old watchmen to implement the Act as cheaply as possible. Some ignored the Act completely, without reproach or penalty and therefore the Act's good intentions were nullified.

An 1839 Royal Commission proposed that there should be a single police force for the whole of the country (including Wales) outside London, controlled by local magistrates rather than the local authorities, but the idea was rejected.

In the 1850s, the Government attempted to reform provincial policing, but faced furious opposition from the local authorities. Finally, despite the resistance of local authorities, it passed the *County and Borough Police Act 1856*:

- a rural police force was to be created in all counties, and county policemen would have the same powers in the boroughs that borough policemen had in the counties.

The major issue in this debate was, who controlled or – ought to control – the police?

The Government was forced to make concessions to the local authorities, including dropping a proposed power to enable Home Secretaries to decide the size of a county force.

In the early 20th century, the police service had little co-operation between forces and no common standards of pay or conditions of service.

In 1919 the Desborough Committee recommended that the pay and conditions of service of all police officers should be improved, standardised, and placed under the control of the Home Secretary.

Desborough rejected nationalisation of the service and increased a constable's pay to that of a semi-professional worker, rather than an agricultural labourer or unskilled worker.

Local authorities protested about the extent of central government control, especially the new pay scales. Protests were ignored, and the Home Office began to exercise a measure of control over the police for the first time, designed to bring uniformity to policing throughout the country.

The 1929 Royal Commission seemed to reject the unique status of the constable, stating: *"A policeman, in the view of the common law, is only a person paid to perform, as a matter of duty, acts which if he were so minded, he might have done voluntarily."*

However, the next year a judge restated the importance of the office of constable: *"The powers of a constable, whether conferred by statute law or common law, are exercised by him by virtue of his office, and cannot be exercised on the responsibility of any person but himself. A constable, therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority."*

It was not until the *Police Act 1964* that the chief officer was liable for the wrongful acts of a constable of his force. This was so



that a citizen with a justifiable complaint could obtain financial redress. It did not affect the doctrine of a constable's individual responsibility for his actions.

In 1955, the Judicial Committee of the Privy Council stated: *"(The constable) is an officer whose authority is original, not delegated, and is exercised at his own discretion by virtue of his office: he is a ministerial officer exercising statutory rights independently of contract."*

The 1931 and 1955 judgements came to be relied upon by chief constables who wished to assert their independence of their police authorities when it came to the exercise of police powers.

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What are the principles of policing?

Since the modern policing began in 1829 there have been fundamental principles that defined the function and purpose of policing. These principles have evolved over the years but the basics and core objectives have stood the passage of time.

The first principles were introduced by Sir Robert Peel. As Home Secretary, he introduced a number of important reforms of British criminal law, most memorably establishing the Metropolitan Police Force

(Metropolitan Police Act 1829). Robert Peel developed the 'Peelian Principles' which defined the ethical requirements police officers must follow in order to be effective. His most memorable principle was: "The police are the public, and the public are the police."

It is interesting to note that the fundamentals of policing have not changed over the centuries, as Sir Robert's Nine Points of the Law demonstrate.




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Sir Robert Peel's nine principles of policing

1. The basic mission for which the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon public approval of police actions.
3. Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
4. The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
5. Police seek and preserve public favour not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.
6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
7. Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
8. Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.







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