

POLICE AND CRIME PANEL PANEL HEDDLU A THROSEDD



North Wales Police and Crime Panel

Friday, 4 October 2013 at 2.00 pm
Rhuddlan Room - Venue Cymru

AGENDA

1. **Apologies for absence**
2. **Declarations of Interest: Code of Local Government Conduct**
Members are reminded that they must declare the **existence** and **nature** of their declared personal interests.
3. **Urgent matters**
Notice of items which, in the opinion of the Chairman, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act 1972.
4. **Confirmation Hearing for Temporary Deputy Police and Crime Commissioner** (Pages 1 - 17)

Membership of Panel

Cllr Glenys Diskin (Acting Chair)

Flintshire County Council

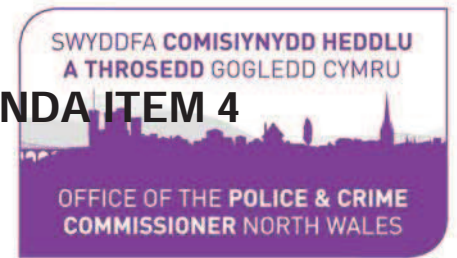
Cllr Amanda Bragg
Cllr Philip C. Evans J.P.
Cllr William T. Hughes
Cllr Charles Jones
Cllr Colin Powell
Cllr Bill Tasker
Cllr Gethin Williams

Flintshire County Council
Conwy County Borough Council
Ynys Mon County Council
Gwynedd Council
Wrexham County Borough Council
Denbighshire County Council
Gwynedd Council

Patricia Astbury
Timothy Rhodes

Independent Co-opted Member
Independent Co-opted Member

AGENDA ITEM 4



Councillor Glynis Diskin
Chair
Police and Crime Panel
Conwy County Borough Council
Bodlondeb
Conwy LL32 8DU

Ein Cyf / Our Ref: WR/mm

26 September 2013

Dear Glynis

Deputy Police and Crime Commissioner Confirmation Hearing

The Police Reform and Social Responsibility Act 2011 requires me to seek the recommendation of the Police and Crime Panel on the person nominated to be the Deputy Police and Crime Commissioner for the police area of north Wales.

I am therefore writing to inform you of my nomination to this statutory post. My recommendation is that Mr Julian Sandham is appointed as Deputy Police and Crime Commissioner for north Wales. This appointment will be on a temporary basis only until a permanent appointment can be made.

I would appreciate if the Police and Crime Panel could consider my recommendation at a Confirmation Hearing and report back to me on whether my recommendation meets the Panel's approval.

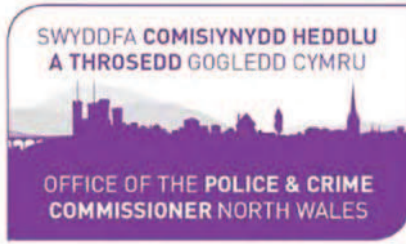
A full report is attached for the Panel's consideration.

Thank you.

Yours sincerely

Winston Roddick CB QC
Commissioner

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OFFICE OF THE POLICE AND CRIME COMMISSIONER NORTH WALES

4 October 2013

Temporary Deputy Police and Crime Commissioner

Report of Police and Crime Commissioner

1. INTRODUCTION

- 1.1 The Police Reform and Social Responsibility Act 2011 (“the Act”) requires the Police and Crime Commissioner (“the Commissioner”) to seek the recommendation of the Police and Crime Panel (“the Panel”) on the person nominated to be the Deputy Police and Crime Commissioner for the police area of north Wales.

2. RECOMMENDATIONS

- 2.1 In accordance with the Act the Panel is invited to review the proposed appointment of Mr Julian Sandham as temporary Deputy Police and Crime Commissioner for north Wales.
- 2.2 Make a recommendation to the Commissioner for north Wales as to whether or not the candidate should be appointed.
- 2.3 To note that the Commissioner will be resuming the recruitment process to recruit a Deputy Police and Crime Commissioner on a permanent basis.

3. BACKGROUND

- 3.1 The Act provides, under section 18(1), that the Commissioner for a police area may appoint a person as the Deputy Police and Crime Commissioner for that area.
- 3.2 Under Schedule 1, paragraph 9, of the Act, the Commissioner must notify the Panel of his proposed appointment to the post of ‘Deputy Police and Crime Commissioner’.
- 3.3 The Commissioner must also notify the Panel of the following information:
- 3.3.1 The name of the person he is proposing to appoint;
 - 3.3.2 The criteria used to assess the suitability of the candidate for the appointment;
 - 3.3.3 Why the candidate satisfies those criteria; and
 - 3.3.4 The terms and conditions on which the candidate is to be appointed
- 3.4 Under paragraph 10 of Schedule 1, the Panel must review the proposed appointment and make a report to the Commissioner on the proposed appointment, including a recommendation to the Commissioner as to whether or not the candidate should be appointed, within a period of 3 weeks beginning with the day on which the Panel receives notification from the Commissioner of the proposed appointment.
- 3.5 The Commissioner must notify the Panel of the decision whether to accept or reject the recommendation of the Panel.

4. MATTERS FOR CONSIDERATION

4.1 Appointment Process

- 4.1.1 The Commissioner carried out an open and transparent recruitment exercise earlier in the year. A candidate was selected but on being offered the post formally he declined it for personal reasons.
- 4.1.2 The Commissioner is deeply disappointed that the appointment could not be completed.
- 4.1.3 It is common ground between the Panel and Commissioner that the Commissioner has a present need for a Deputy to assist him to fulfilling his election promises and meeting all of his statutory duties.
- 4.1.4 The Commissioner is therefore starting the recruitment process again, with the objective of appointing a suitable candidate for the post of Deputy Police and Crime Commissioner for North Wales.
- 4.1.5 In the meantime, the Commissioner proposes to fill the post of Deputy Police and Crime Commissioner on a temporary basis until a permanent appointment is made.

4.2 Name of the Candidate

The name of the person the Commissioner is proposing to appoint to the post of temporary Deputy Police and Crime Commissioner for north Wales is Mr Julian Sandham.

4.3 Criteria used to assess the suitability of the candidate for the appointment

The Commissioner recognises that his statutory duties are significant (see Appendix 1) and that he is the person solely responsible for their discharge. As a consequence he wants to appoint a deputy who can provide extra support to him, but in particular someone who has:

- a) High level of integrity and sound judgement and someone in whom the Commissioner can have complete confidence
- b) Experience and understanding of the police service and of police governance and accountability
- c) Understanding of the need for engagement with community groups within north Wales
- d) Shared values in respect of the role and purpose of the police service and its accountability
- e) A shared understanding not to interfere in the operational independence of the police

4.3.1 The Commissioner is satisfied that Mr Julian Sandham has suitable experience and understanding of the role.

4.3.2 Mr Sandham has over 30 years of policing experience and is considered an excellent choice for the post of Deputy Police and Crime Commissioner for North Wales and furthermore he has a first class honours degree.

4.4 Terms and Conditions of Appointment

4.5 The Deputy Police and Crime Commissioner will be a member of staff of the Office of the Police and Crime Commissioner. A copy of the Terms and Conditions are attached (Appendix 2)

| | |
|------------|---|
| Appendix 1 | Summary of Statutory Role, Responsibilities and Functions of the Police and Crime Commissioner and the permissible delegation of functions by a Police and Crime Commissioner to a Deputy Police and Crime Commissioner |
| Appendix 2 | Post Profile, Person Specification and Terms and Conditions |

5. IMPLICATIONS OF THE REPORT

- 5.1 Diversity All OPCC staff have due regard to the provisions of the Equality Act 2010
- 5.2 Financial The salary has been agreed at scale PO(D). The initial recruitment process was carried out in-house and attracted nominal fees. The Independent Appointments Panel Members were paid the usual day attendance allowances and travelling expenses.
- 5.3 Legal The power and process by which the Police and Crime Commissioner may appoint a Deputy Police and Crime Commissioner for his police area is provided by The Police Reform and Social Responsibility Act 2011 (section 18(1), and Schedule 1, paragraphs 9 and 10, respectively).
- 5.4 Risk The Commissioner needs a Deputy to assist with the statutory duties of the Act. It would be a risk to the organisation if all statutory duties were not addressed. This document will be made available to the public.
- 5.5 Welsh Language For this post the ability to communicate effectively through the medium of Welsh is desirable. Non Welsh speaking applicants should commit themselves to learning Welsh to the appropriate standard to undertake the post.

Report Author

Anna Humphreys, Chief Executive

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**Summary of the Statutory Role, Responsibilities and Functions of the
Police and Crime Commissioner (PCC) and the permissible delegation of functions by a PCC
to a Deputy Police and Crime Commissioner (DPCC)**

| PCC FUNCTIONAL RESPONSIBILITY | PR&SR Act 2011 | Permissible Delegation of PCC function to DPCC? | |
|---|-----------------------------------|--|------------------------------------|
| | | Permissible (at discretion of PCC) | Non- Permissible (s18(3)(b)) |
| Policing | Reference to Section of Act | | |
| Secure the maintenance of an efficient and effective police force for that area | s1(6) | ✓ | |
| | | | |
| Strategic Planning | | | |
| Issue a Police and Crime Plan | s5 | | X |
| Review the Police and Crime Plan | s5(9) | ✓ | |
| | | | |
| Holding the Chief Constable (CC) to account for: | | | |
| <ul style="list-style-type: none"> The exercise of the functions of the CC, and of persons under the direction and control of the CC | s1(7) | ✓ | |
| <ul style="list-style-type: none"> The exercise of the duty to have regard to the Police and Crime Plan | s1(8)(a) | ✓ | |
| <ul style="list-style-type: none"> The exercise of the duty to have regard to the Strategic Policing Requirement | s1(8)(b) | ✓ | |
| <ul style="list-style-type: none"> The exercise of the duty to have regard to codes of practice issued by the Secretary of State | s1(8)(c) | ✓ | |

| | | | |
|---|-------------------|---|--|
| • The effectiveness and efficiency of the CC's arrangements for co-operating with other persons | s1(8)(d) | ✓ | |
| • The effectiveness and efficiency of the CC's arrangements for engagement with local people | s1(8)(e) | ✓ | |
| • The extent to which the CC achieves value for money | s1(8)(f) | ✓ | |
| • The exercise of duties relating to equality and diversity | s1(8)(g) | ✓ | |
| • The exercise of duties in relation to the safeguarding of children and the promotion of child welfare | s1(8)(g) | ✓ | |
| | | | |
| Partnership Working | | | |
| May make a crime and disorder reduction grant to any person | s9(1) | ✓ | |
| Must have regard to the relevant priorities of each responsible authority | s10(1) | ✓ | |
| Must act in co-operation with responsible authorities | s10(2) | ✓ | |
| Must make arrangements with criminal justice agencies for the exercise of functions so as to provide an efficient and effective criminal justice system for the area | s10(3) | ✓ | |
| Must keep under consideration the ways in which the collaboration functions could be exercised to improve the efficiency and effectiveness of the policing body and/or the Force, or one or more other policing bodies and forces | s89(2) | ✓ | |
| Enter into collaboration arrangements | s89 & Schedule 12 | ✓ | |
| Keep collaboration agreements under review | s89 & Schedule 12 | ✓ | |

| | | | |
|--|---------------------------|---|---|
| Provide advice and assistance to a body outside the UK | Schedule 16, para. 25 | ✓ | |
| | | | |
| People | | | |
| Appointment, suspension and removal of the CC | s38 | | X |
| Appointment of a chief executive and chief finance officer | Schedule 1 | ✓ | |
| Appointment of Deputy Police and Crime Commissioner | s18(1) | | X |
| Appointment of other staff as appropriate | Schedule 1, para. 6(3) | ✓ | |
| | | | |
| Information and Engagement | | | |
| Publish specified information for the public in the time or manner specified | s11 | ✓ | |
| Produce an Annual Report | s12 | ✓ | |
| Provide the Police and Crime Panel with any information which the Panel may reasonably require | s13 | ✓ | |
| Make arrangements for obtaining: | s14 | | |
| • The views of people about matters concerning the policing of the area | | ✓ | |
| • The views of victims of crime about matters concerning the policing of that area | | ✓ | |
| • The views of: | | | |
| (a) The people in that area | | ✓ | |
| (b) The relevant ratepayers' representatives | | ✓ | |

| | | | |
|--|----------------------|---|---|
| on the proposals of the PCC for expenditure before the first precept for a financial year is issued by the a PCC | | | |
| | | | |
| Finance | | | |
| Enter into agreements for the supply of goods and services | s15 | ✓ | |
| Keep a Police Fund | s21 | ✓ | |
| Receive grants for police purposes | s24 | ✓ | |
| Receive grants for capital expenditure | s25 | ✓ | |
| Receive national security grants | s25 | ✓ | |
| Receive grants from local authorities | s25 | ✓ | |
| Accept gifts or loans | s25 | ✓ | |
| Borrow monies | s25 | ✓ | |
| Issue a precept | s26 | | X |
| Receive emergency financial assistance | s27 | ✓ | |
| Do anything calculated to facilitate the exercise of the PCC's functions, including: | Schedule 1, para. 14 | ✓ | |
| • Entering into contracts and other agreements | | ✓ | |
| • Acquiring and disposing of property (including land) | | ✓ | |
| • Borrowing money | | ✓ | |
| | | | |

Job Description

| | |
|------------------------|---|
| Job Title: | Deputy Police and Crime Commissioner (the Deputy) |
| Salary: | Scale PO(D) full time post. (Applications on a part time basis will be considered, the salary will be adjusted pro rata) |
| Responsible to: | Police and Crime Commissioner (the Commissioner) |
| Hours: | Full or part-time options available Due to the nature of the role, it is to be expected that a proportion of duties will take place during evenings and at weekends, for which no additional recompense is provided. |
| Location: | Police Headquarters, Glan-Y-Don, Colwyn Bay, LL29 8AW |

Job Summary

- The Deputy will be responsible for supporting the Commissioner in all aspects of his role
 - To work with the Commissioner to enable delivery against vision, strategy and identified priorities
 - To engage with communities in north Wales to ensure that their views are reflected in the work of the Commissioner
-

Overview of the role

The role of Deputy was created by statute in 2011 and is part of the fundamental change to the governance of policing. The Deputy will be responsible for supporting the Commissioner in all aspects of his role.

This job profile outlines the critical dimensions and features for the role including the key responsibilities of the post-holder.

The post-holder will report directly to, work in conjunction with and be answerable to the Commissioner.

Key responsibilities

1. To be responsible for the commissioning of services and development of grant funding programmes through the Commissioners 'Community Safety Fund' to support the delivery of the Police and Crime Plan
2. To proactively enhance relationships with a wide range of stakeholders in the community safety and criminal justice sectors, to identify blockages or identify opportunities to improve the delivery of programmes that secure improved outcomes for local people.
3. Lead collaborative initiatives with local partners and stakeholders to reduce crime and enhance community policing.

4. To quality assure the provision of policing services in north Wales and support the Commissioner in scrutinising the effectiveness and efficiency of policing in north Wales
5. To act as an ambassador for the Commissioner and engage with relevant community groups, public bodies, elected representatives and organisations to better understand the policing needs of the community.
6. To support the Commissioner in ensuring that the needs of the community are represented in policing and where appropriate translate the community needs into legitimate actions and outcomes.
7. Help to brief members of Parliament, members of the Welsh Assembly, councillors, government officials and other voluntary and criminal justice partners on the Commissioner's policy.
8. Represent the authorised views of the Commissioner to the media where appropriate.
9. On behalf of the Commissioner, help to generate policy proposals and respond to national policy developments. This will include engaging with other Police and Crime Commissioners in Wales and England.
10. Assist the Commissioner in liaising with the chief constable of North Wales Police and his staff and liaise with organisations and individuals at regional and national levels.

The post holder must be prepared to undertake additional duties arising from changing circumstances but which do not change the general character or level of responsibility of the post.

Travel: The fulfilling of these responsibilities will require extensive travel in north Wales and on occasions other parts of Wales and England.

Working Hours: A flexible approach to hours of working and a commitment to be available for weekend and evening duties where required.

Security Vetting: It is a requirement for the role to have Management vetting accompanied by National Security check.

Person Specification

Personal qualities – the views of the Commissioner

I am looking for someone in whom I can have the utmost confidence, someone on whom I can depend and someone who has integrity and good judgement. I am looking for some or all of the following qualities:

- Strong sense of independence
- Vision and an ability to think strategically and laterally
- Leadership and management skills
- Able to manage change and initiate innovation
- Able to give media interviews and presentations
- Strong understanding and knowledge of current affairs

Experience & qualifications

- An excellent understanding and experience of the diverse geographic, social and economic nature of the area
- Sound experience of working with diverse communities and working to secure improved outcomes for local people
- Experience in commissioning services
- Educated to degree level or equivalent professional/specialised qualification or have experience, which demonstrates their intellectual capacity to operate within a complex role
- A good understanding and experience of organisational challenges of ensuring the right balance between cost, value in an environment of reducing resources
- Experience of organisational governance and scrutiny, with a sound understanding of accountability
- Experience of working across different agencies at strategic and operational levels
- Experience in translating strategic objectives into action

Skills - Essential

- Ability to deliver on strategic goals and vision
- Ability to take a co-operative approach to achieving priorities, including developing effective collaboration proposals with relevant organisations
- High-level communication and presentation skills
- Ability to engage, listen and understand communities with differing needs
- Ability to think and operate at a strategic level, identifying issues and setting priorities at an organisation-wide level and/or over a lengthy time period
- Ability to maintain good working relationships with partner organisations
- Ability to build relationships, influence and negotiate with high ranking officials
- A flexible approach to working during weekends and evenings should this be necessary
- Must reside in the Force area of North Wales
- Evidence of an understanding political structures, procedures and policies at both a local and national level
- IT literate to a good level
- An ability to drive

Skills – Desirable

- For this post the ability to communicate effectively through the medium of Welsh is desirable. Non Welsh speaking applicants should commit themselves to learning Welsh to the appropriate standard to undertake the post

Qualities

- Is able to secure credibility, respect and recognition from peers and stakeholders
- Shares the Commissioner's aspirations, values and commitments
- Is able and confident to take personal responsibility for decisions made and to be able to communicate these effectively
- Is committed to the seven principles of public life

Principles of Public life

Selflessness:

We will take decisions solely in terms of the public interest. We will not take decisions in order to gain financial or other material benefits for ourselves, our families, or friends.

Integrity:

We will not place ourselves under any financial or other obligation to outside individuals or organisations that may influence our performance of our official duties.

Objectivity:

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, we will make choices on merit.

Accountability:

We are accountable for our decisions and actions to the public and submit ourselves to whatever scrutiny is appropriate to our office.

Openness:

We will be as open as possible about all decisions and action that we take. We will give reasons for our decisions and restrict information only when the wider public interest clearly demands.

Honesty:

We have a duty to declare any private interests relating to our public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership:

We will promote and support these principles through leadership and by our own example.

About the Commissioner

The Commissioner is responsible for ensuring the policing needs of the communities of north Wales are met as effectively as possible.

He will do this by:

- holding the Chief Constable to account for the delivery of the police force
- setting and updating the Police and Crime Plan
- setting the force budget and precept
- regularly engaging with the public and communities

The Commissioner will set direction. This involves:

Setting the strategic direction and accountability for policing

- setting strategic policing objectives
- holding the force to account through the Chief Constable
- consulting and involving the public
- being accountable to the electorate

Working with partners to prevent and tackle crime and re-offending

- ensuring that the police respond effectively to public concerns and threats to public safety
- promoting and enabling joined up working on community safety and criminal justice
- increasing public confidence in how crime is cut and policing delivered

Invoking the voice of the public, the vulnerable and victims

- ensuring that public priorities are acted upon, victims are consulted and that the most vulnerable individuals are not overlooked
- complying with the Equality Act
- contributing to resourcing of policing response to regional and national threats
- ensuring an effective policing contribution alongside other partners to national arrangements to protect the public from other cross-boundary threats in line with the strategic policing requirement

Ensuring value for money

- responsible for the distribution of policing grants from central government and setting the precept raised through council tax

Deputy Police and Crime Commissioner – Disqualification Criteria

Extracts from the [Police Reform and Social Responsibility Act 2011](#)

S8 The Deputy Police and Crime Commissioner

Relevant extracts from paragraph 8, Schedule 1, of the Police Reform and Social Responsibility Act 2011

- 8
- (1) This paragraph applies to a person appointed under section 18 by a Police and Crime Commissioner to be the deputy police and crime Commissioner.
 - (2) None of the following may be appointed as the deputy police and crime commissioner-
 - a) a person who has not attained the age of 18 on the day of the appointment;
 - b) a person who is subject to a relevant disqualification;
 - c) a Member of the House of Commons
 - d) a Member of the European Parliament
 - e) a Member of the National Assembly for Wales
 - f) a Member of the Scottish Parliament
 - g) a Member of the Northern Ireland Assembly
 - (3) The terms and conditions of a person who is appointed as the deputy police and crime commissioner must provide for the appointment to end not later than the day when the current term of Office of the appointing police and crime commissioner ends.
 - (4) Section 7 of the Local Government and Housing Act 1989 (appointment of staff on merit) does not apply to the deputy police and crime commissioner.
 - (5) In this paragraph “current term of office”, in relation to the appointment of a deputy police and crime commissioner by a police and crime commissioner, means the commissioner’s term of office which is running at the time the appointment is made.
 - (6) For the purposes of this paragraph, a person is subject to a relevant disqualification if the person is disqualified from being elected as, or being, a police and crime commissioner under-
 - a) section 65(1) (police officers, police-related employment etc), other than paragraph (e)(ii); or
 - b) section 66(1), 3(a)(iii) or (iv), 3(c) or 3(d) (citizenship, bankruptcy, criminal convictions & corrupt or illegal election practices)

S65 Disqualification from election or holding office as police and crime commissioner: police grounds

Relevant extracts from Section 65(1) of the Police Reform and Social Responsibility Act 2011

- 65
- (1) A person is disqualified from being elected as, or being, a Police and Crime Commissioner if the person-
 - a) is disqualified from being a member of the House of Commons under section 1(1)(d) of the House of Commons Disqualification Act 1975 (members of police forces for police areas in the United Kingdom);
 - b) is a member of-
 - (i) *the British Transport Police Force*

- (ii) *the Civil Nuclear Constabulary*
- c) is a special constable appointed-
 - (i) *under section 27 of the Police Act 1996 for a police area or the City of London police area;*
 - (ii) *under section 25 of the Railways and Transport Safety Act 2003 (British Transport Police Force)*
- d) is a member of staff of the chief officer of police of any police force maintained for a police area;
- e) is a member of staff of-
 - (i) *a Police and Crime Commissioner;*
 - (ii) *the Mayor's Office for Policing and Crime;*
- f) is the Mayor of London;
- g) is a member of the Common Council of the City of London or a member of staff of that Council in its capacity as a police authority;
- h) is a member (including a member who is chairman or chief executive), or a member of staff, of-
 - (i) *the British Transport Police;*
 - (ii) *the Civil Nuclear Police Authority;*
 - (iii) *the Independent Police Complaints Commission;*
 - (iv) *the Serious Crime Agency;*
 - (v) *The National Policing Improvement Agency;*
- i) holds any employment in an entity which is under the control of-
 - (i) *a local policing body;*
 - (ii) *any body mentioned in paragraph (h);*
 - (iii) *the chief officer of police for any police force maintained for a police area or the City of London police area;*
 - (iv) *the chief officer of police for any police force mentioned in paragraph (b).*

S66 Disqualification from election or holding office as police and crime commissioner: other grounds

Relevant extracts from Section 66 of the Police Reform and Social Responsibility Act 2011

- 66 (1) A person is disqualified from being elected as, or being, a police and crime commissioner unless the person satisfies the citizenship condition (see section 68)
- (2) A person is disqualified from being elected as, or being, a police and crime commissioner if the person—
- (a) is disqualified from being a member of the House of Commons under section 1(1)(a) to (c) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces), or
 - (b) is a member of the legislature of any country or territory outside the United Kingdom.
- (3) A person is disqualified from being elected as, or being, a police and crime commissioner if:-
- (a) the person is the subject of-
 - (i) *a debt relief restrictions order under paragraph 1 of Schedule 4ZB to the Insolvency Act 1986;* .
 - (ii) *an interim debt relief restrictions order under paragraph 5 of that Schedule;*

- (iii) *a bankruptcy restrictions order under paragraph 1 of Schedule 4A to that Act;*
- (iv) *a bankruptcy restrictions interim order under paragraph 5 of that Schedule;*
- (c) the person has been convicted in the United Kingdom, the Channel Islands, or the Isle of Man, of any imprisonable offence (whether or not sentenced to a term of imprisonment in respect of the offence); or
- (d) the person is incapable of being elected as a member of the House of Commons, or is required to vacate a seat in the House of Commons, under Part 3 of the Representation of the People Act 1983 (consequences of corrupt or illegal practices).

S68 Citizenship condition

Relevant extract from Section 68 Police Reform and Social Responsibility Act 2011

- 68
- (1) This section applies for the purposes of section 66.
 - (2) A person satisfies the citizenship condition if the person is—
 - (a) a qualifying Commonwealth citizen,
 - (b) a citizen of the Republic of Ireland, or
 - (c) a citizen of the Union.
 - (3) For the purposes of this section, a person is a qualifying Commonwealth citizen if the person is a Commonwealth citizen and—
 - (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or
 - (b) is a person who requires such leave but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act.
 - (4) But a person who does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases) is not a qualifying Commonwealth citizen by virtue of subsection (3)(a).
 - (5) In this section the expression “citizen of the Union” is to be construed in accordance with Article 20(1) of the Treaty on the Functioning of the European Union.

