

Protecting the Protectors: lobbying Police and Crime Commissioners for greater transparency over policing at fracking sites

WHAT ARE POLICE AND CRIME COMMISSIONERS (PCCs)?

The *Police Reform and Social Responsibility Act 2011* created Police and Crime Commissioners (PCCs) to replace the now-abolished Police Authorities in England and Wales with a single elected individual. The first incumbents were elected in November 2012 to serve for three-and-a-half years, but PCCs are currently elected for four-year terms.

The most recent elections took place in 40 police force areas in May 2016. Twenty of the elected PCCs are Conservatives, 15 Labour, 3 Plaid Cymru and 3 are independent. In Greater Manchester and London the responsibilities of PCC lie with the Mayor (in both cases, Labour politicians). Most PCCs are former politicians and some were previously members of Police Authorities. The three independents are in Avon & Somerset, Dorset and Gloucestershire and two of these are former police officers.

The PCCs in a few of the key fracking areas are:

- **Lancashire:** Clive Grunshaw was formerly a Lancashire County Council member who stood unsuccessfully as the Labour candidate for Lancaster and Fleetwood at the 2010 general election.
- **Nottinghamshire:** Paddy Tipping was formerly Labour MP for Sherwood from 1992 to 2010.
- **North Yorkshire:** Julia Mulligan was formerly a Craven District councillor and stood as the Conservative candidate for Leeds North West in 2010.
- **Sussex:** Katy Bourne was formerly a Conservative District councillor for Mid Sussex and national chair of the the Conservative Women's Organisation.

A full list of PCCs with links is available at www.apccs.police.uk/find-your-pcc

The Association of Police and Crime Commissioners describes the role of its members as “elected by the public to hold Chief Constables and the force to account, effectively making the police answerable to the communities they serve”.

In practice, most see their role primarily as lobbying for more resources for their local force, promoting partnership working and crime reduction in their areas and supporting victims of crime. Engagement and consultation with the public tends to focus on these issues: the police's approach to fundamental rights to freedom of assembly and expression is an issue that most PCCs have probably never even considered.

WHAT ARE WE ASKING FOR?

One of the problems with negotiating directly with the police is that these discussions are usually operational – about the specific details of a particular site or location – and there is rarely scope to influence strategic matters.

The emphasis is often (unfairly) on protesters' conduct, with negotiations invariably focusing on how campaigners intend to 'self-police' their activities and deal with alleged 'troublemakers'. There is seldom any commitments from the police on the steps they will take to genuinely protect the right to protest.

Instead of negotiating directly with the police, Netpol believes there is far greater potential benefits for anti-fracking campaigners in lobbying their PCCs, who are able to play an important role in scrutinising the human rights compliance of policing operations in their areas.

We are asking local anti-fracking groups to get in contact with their PCC to draw up and publish a plan for the policing of protests, agreed by their Chief Constable and containing a clear set of minimum standards and expectations. This would involve public consultation that listens to local people who are likely to take part in protests against fracking sites.

We believe such a plan should cover key contentious areas, such as the scale of policing operations, the use of force, surveillance and intelligence gathering and data sharing and partnership working with fracking companies. Police forces should explain in detail how they plan to positively protect the rights to freedom of assembly and how they will avoid prioritising the interests of the oil and gas industry over and above the rights of campaigners.

A national framework for policing operations in response to anti-fracking protests was adopted in 2015, but its author the National Police Chiefs Council has insisted that most strategic decisions must take place at a local force level. This means that pressure from anti-fracking campaigners on their own forces is both important and effective.

IS THE PCC LIKELY TO LISTEN TO THESE CONCERNS?

Campaigners are always competing against powerful political and corporate interests with more resources and influence. PCCs are politicians and have shown little enthusiasm for putting pressure on their Chief Constables unless faced with considerable public pressure (in South Yorkshire over the Hillsborough inquests, for example). There is no doubt, therefore, that we face an uphill struggle.

Nevertheless, whether your PCC agrees or not to consult on and publish a transparent plan for policing anti-fracking protests, lobbying on this issue helps to set down a marker for future police conduct.

- It offers another opportunity to explain to the media about the reasons why so many local people are concerned about fracking and feel so passionately that they must protest against it.
- It also means you can talk about how you hope the police will recognise their positive duty to facilitate and protect the important right to assembly if there are protests in the future.
- Lobbying in advance of any potential protests allows you to legitimately say you have tried to engage in a discussion on the policing of protests and shows you have attempted to minimise the possibility of conflict – even if you have been ignored.

- All too often, the debate about opposition to fracking has been drowned out by arguments about the conduct of protesters. Lobbying will hopefully mean that if there are protests that involve arrests, you are in a better position to respond to attempts to smear protesters and keep the focus on your campaigning on the practices of the oil and gas industry.

CONTACTING YOUR PCC TO ASK FOR A MEETING

At the end of this guide is a model letter to send to your PCC requesting a meeting. You should adapt it to fit your local circumstances – you can download the text from Netpol's website at bit.ly/frack-pcc

It is important to push for a **face-to-face meeting** with your PCC: he or she needs to see anti-fracking campaigners as local residents rather than as the kind of stereotypical 'environmentalist troublemaker' that seems to have dominated the police's response to protest groups around the country.

If you receive a written acknowledgement from your PCC's office that makes generally supportive statements about the right to protest and 'the need to balance the rights and concerns of others' without promising a meeting, **keep pushing for one**. The experience of campaigners around the country is that arguments about 'balance' invariably mean riding roughshod over the rights of protesters and the best way to communicate your concerns is in person.

Check the PCC's website and try to **identify a senior member of staff** responsible for communications and engagement whom you can speak to. Ring the PCC's office and insist that you represent a group (or coalition of groups) that wish to raise important concerns and that you need to do so in a formal meeting.

If your PCC flatly refuses to engage, you may need to consider going public about this, but you should leave this as your final option. If there is any possibility of a meeting taking place without condemning the PCC in advance for his or her intransigence, it will mean a more productive encounter!

PREPARING FOR A MEETING

If you manage to secure a meeting, you will have limited time to make your case. Your PCC is also likely to have been briefed by the police about the alleged threat of disruption and illegality posed by anti-fracking campaigners, as well as from 'outsiders coming in and causing trouble' – and unfortunately to accept this without question

A meeting offers an opportunity to turn these arguments around. You can consider mentioning the following:

- There were 120 arrests at Barton Moss in Salford – this is often used as evidence of the 'violence' of protesters. However, 98% of those arrested were for non-violent offences such as obstructing the highway and two-thirds (66%) of those arrested had their cases dropped, dismissed or been found not guilty by the courts.

This means there was a conviction rate of only 34% - by way of contrast, the national conviction rate for arrests for summary offences (those heard in the Magistrates' Court) as a whole is 81% and for public order offences this rises to 96%.

- Controversy about the policing of anti-fracking protesters has more often focused on the actions of the police themselves. This includes not only allegations of violent behaviour (at Barton Moss, targeting women in particular) and an over-eagerness to

make arrests when there is a protest camp, but more widely around intrusive and often intimidating surveillance against 'organisers'. Remind your PCC that this kind of surveillance damages confidence in the police and is itself more likely to inhibit people from exercising their right to freedom of assembly.

- The trouble with talking about 'good' and 'bad' protesters is that by starting with negative assumptions about anti-fracking campaigners, every campaign activity that moves beyond a formal procession quickly becomes labelled as 'bad'.

This has been the experience of anti-fracking groups in other parts of the country. For example, campaigners in Surrey were told by a senior officer that their protest camp and activities outside a exploration site were 'unlawful' because they were not notified to police in advance. At other protests, campaigners have been told that they will have 'crossed a line' if they engage in civil disobedience, even when this is simply slowing the arrival of lorries to a site.

- It is worth reminding your PCC that even when protesters decide to engage in civil disobedience with the expectation that they might face arrest, the courts recognise their motivations are usually based on sincere beliefs and this is invariably reflected in sentencing. Most anti-fracking campaigners convicted of blocking the highway have received a conditional discharge for this reason. Lord Hoffman in a Court of Appeal judgment in 2006 explained why:

Civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind.

Senior officers like to talk about a particularly 'British model of policing' and this must presumably embrace the sensible views of an eminent Law Lord on what constitutes the mark of a 'civilised community'.

- Senior officers also often express the importance of 'no surprises', but this does not mean that protesters must share their plans with the police in advance. UK law requires no advance notice of assemblies, and human rights law is clear that the right of assembly is not dependant on the approval or permission of the authorities. Instead, the police have a 'positive duty' to facilitate protest and to ensure people are able to take part in it.

'No surprises' should mean that campaigners are aware of how the police will respond to any given situation. This means more than simply communicating intentions on the day of a protest. It must also mean clarity and detail in advance about the strategy the local force will adopt to ensure it fulfils its positive duty to facilitate and protect the right to protest against fracking.

- This positive duty has a bearing on the size of the policing operation, how traffic is managed to protect people taking part in protests, the police's plan for when to make arrests and the justification for using intensive and often intimidating surveillance before and after a protest takes place. It includes issues like the use of body-worn cameras and whether to deploy covert intelligence gathering. Publishing a open and transparent plan can ensure that there are fewer surprises on all these issues.
- It is worth mentioning too that the issue of impartiality between the interests of the oil and gas industry and the rights of campaigners has been raised at previous anti-

fracking protests One judge described the actions of the police at Barton Moss as “acting as civil enforcement officers” for the company IGas. Emphasise that setting out minimum standards and expectations in advance is a way of trying to avoid this.

- You could suggest that consultation on such a plan, listening to the views of local people who want to exercise their right to protest, is itself an example of transparency and 'partnership working'.

Keep pushing for consultation and a plan that explains the police's strategy for operations when faced with anti-fracking protests.

SOME RESPONSES YOU MAY ENCOUNTER

If your PCC argues that he or she is powerless to intervene in 'operational matters', stress that, whilst the final decision on the strategy for policing of anti-fracking sites ultimately lies with the Chief Constable, the PCC is in a unique position because of his or her role in ensuring the police are “answerable to the communities they serve”. The PCC can override, in the wider public interest and to ensure human rights are protected, any inevitable reluctance within the police to talk about operational matters.

Furthermore, it is worth emphasising that campaigners are only seeking more openness on the strategy the police will adopt, not the exact details of any operational plan.

If your PCC argues that the police in your area are different to / less confrontational than other forces, suggest that this is all the more reason for them to take a lead in publishing a plan that explains their strategy. Other forces can learn from their positive example.

You could also underline that the National Police Chiefs Council, the national body representing Chief Constables, has acknowledged that a majority of forces face the possibility of anti-fracking protests in their areas and must prepare for them. Your PCC is therefore in a position to take a leadership role in promoting transparency, accountability and protection of human rights.

If, however, claims that police locally respond positively to protests and are less confrontational do not match your own experiences as campaigners, then say so.

Give examples where your own force could have responded better to local protests or has engaged in intimidating surveillance against campaigners who take on a public role.

If your PCC expresses negative or pre-conceived attitudes about protesters, remind him or her anti-fracking campaigns are just as representative of local people across your area as other community groups and bring together people from a range of backgrounds.

Have some examples ready to highlight your support, from young people to pensioners, people who have voted for different political parties and in particular people who have never been involved in campaign activities before.

If your PCC argues for a 'code of conduct' for protesters too, remind him or her that accountability for public bodies and private individuals are entirely different issues.

Protesters are already held to account for their conduct and behaviour by the possibility of arrest. A 'code of conduct' for members of the public is therefore unnecessary – one already exists in the numerous laws covering public order situations.

In any event, a 'code of conduct' for anti-fracking protesters is also wholly unenforceable. No individual or campaign group can realistically provide absolute commitments about how

every protester will behave, particularly on an issue of national significance where campaigners are invariably seeking support and solidarity from across the country.

Remind the PCC that a plan for policing protests with minimum standards and expectations is **specifically** about encouraging greater transparency and ensuring the police are answerable to the communities they serve.

At the end of the meeting, reiterate this point and its importance because:

- the police have a positive duty to facilitate and protect rights to freedom of assembly.
- You are concerned that the police have often failed to adequately demonstrate this in the past.

it is likely your PCC will say he or she wants to consider further the issues you have raised. Ask for a **written response** to your proposal for a plan and a consultation on its contents and ask for a date when you can expect to hear back.

PRE-MEETING CHECKLIST

- Think carefully about the best people to attend a meeting with your PCC, particularly if you are representing a number of different local groups.
- Make sure all the members of your delegation have time to discuss the arguments set out in this briefing and are properly prepared.
- Identify examples where police in your area could have responded better to local protests or have engaged in unnecessary or intrusive surveillance.
- Prepare evidence highlighting the breadth of your support, ready to counter negative attitudes about anti-fracking campaigners.

WHAT HAPPENS NEXT?

Publicise your meeting to the media after it has taken place, welcoming the opportunity to meet with the PCC and reiterating why the right to protest against fracking is important and necessary. You can mention again that the police have a positive duty to facilitate and protect freedom of assembly.

If your PCC subsequently rejects the proposal for a consultation on a plan for conducting policing operations at fracking sites, you might consider issuing a press release or statement expressing your disappointment at the missed opportunity to avoid surprises and to reduce the prospect of disproportionate and aggressive policing.

If your PCC is sympathetic to your proposal, **contact Netpol for support and advice immediately**. The quickest and easiest way is by email at info@netpol.org.

WHAT ELSE CAN YOU DO?

You can use freedom of information legislation to ask for details of any meetings (including private ones) that your PCC has participated in where matters of significant public interest like the policing of anti-fracking protests have been discussed. The easiest way to make a Freedom of Information request is at www.whatdotheyknow.com

LETTER TO POLICE AND CRIME COMMISSIONERS

Dear [PCC],

Public consultation on policing of protests at oil and gas exploration sites

We represent a coalition of local campaign groups around [county] who are opposed to fracking and unconventional oil and gas exploration and extraction.

We are keen to arrange a meeting with you to talk about our concerns over the policing of any future protests against fracking and how [local force] can learn from events at previous protest sites.

Specifically, we wish to discuss our proposal for consulting with us on a published plan setting out the strategy for the policing at public assemblies. We would hope that any such plan would contain a clear set of minimum standards and expectations, which would be agreed by the Chief Constable.

We believe this is the most effective way of ensuring a 'no surprises' approach to the policing of any future anti-fracking protests. It would involve listening to local people who are likely to take part in protests against fracking sites and would seek to address many of the contentious issues that have emerged from opposition to fracking [in county and] in other parts of the country.

Locally, we have experienced... [optional]

As you know, the police have a 'positive duty' to facilitate freedom of assembly. This involves not only what happens on the day of a demonstration or rally, but activities that take place before and after a protest that may inhibit people from participation, such as intrusive police surveillance or the sharing of data with the oil and gas industry.

All of these concerns are best considered well in advance of protests taking place as minimum standards and expectations can provide clarity not only for campaigners but for officers responsible for policing demonstrations in a human-rights-compliant way.

We welcome a meeting between you and a delegation of local campaigners as soon as possible. Please could you contact [named contact] at [telephone number] or at [email] so we can find a date and time that is suitable.

We look forward to hearing from you.

Yours sincerely,