

LONDON POLICING ETHICS PANEL Commentary

The Police Foundation's Principles for Accountable Policing, and the creation of the new London Policing Board

In April 2023 the Police Foundation published a report titled *Principles for Accountable Policing*. In the report, they set out a framework intended to inform the practice and structure of accountability in UK policing. The report was the outcome of a series of workshops engaging policing experts, practitioners and academics from throughout the UK and supported by the Scottish Universities Insight Institute.

Effective accountability is a core ethical concern closely related to openness and transparency. This was the topic of the most recent London Policing Ethics Panel (LPEP) report.¹ The creation of the new London Policing Board, a key recommendation contained in Baroness Casey's review of the Metropolitan Police Service, suggests an opportune moment for both MOPAC and the MPS to reflect on the principles for accountable policing that they wish to prioritise. We offer this brief commentary on the Police Foundation report with the intention of supporting accountability in the wake of the Casey report, and in particular with the hope of optimising the potential of the new London Policing Board (generally abbreviated to LPB in this report).

The following page reproduces in diagrammatic form the summary of the principles for accountable policing contained in the Police Foundation report².

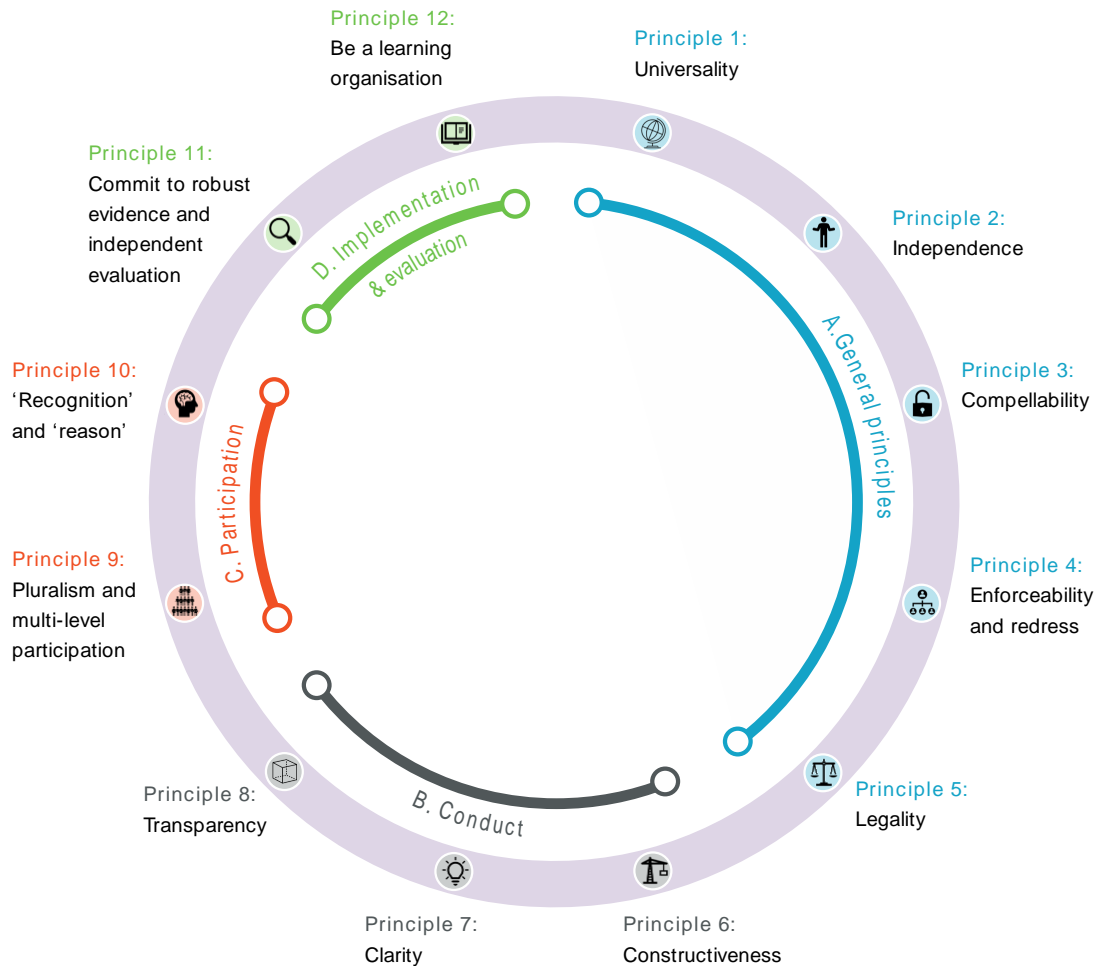
In our commentary, we consider the salience of each of these principles for MOPAC and the MPS, and suggest where there may be accountability opportunities and challenges for the new London Policing Board. We follow the structure of the original Principles for Accountable Policing report (abbreviated below to 'Accountable Policing').

¹http://www.policingethicspanel.london/uploads/4/4/0/7/44076193/lpep_report_openness_and_transparency_in_the_mps_april_2023.pdf

² <https://www.police-foundation.org.uk/publication/principles-for-accountable-policing/> - p.6

SUMMARY OF THE PRINCIPLES FOR ACCOUNTABLE POLICING

These Principles for Accountable Policing are intended to provide a practical baseline which will inform the practice and structure of accountable policing. The Principles apply to the police and oversight bodies. The Principles have been drafted primarily with public bodies in mind but are applicable to all forms of policing.



A. General principles

These principles underpin all accountability.

B. Conduct

These principles describe the conduct of accountability, how it's to be done.

C. Participation

These principles consider how participation in accountability is to be achieved.

D. Implementation and evaluation

These principles set out how to implement effective accountability and evaluate it.

Principle 1 Universality

Accountable Policing emphasises the complex and multi-layered governance requirements of policing in the UK. By universality it means the need for accountability of officers and staff at multiple levels of national, transnational, public, and private policing, and the requirement for accountability of the oversight bodies themselves.

Notably, it draws attention to the risks of

- gaps in accountability
- lines of accountability being blurred or confused
- accountability mechanisms being obscure to the agencies themselves, other agencies, or the public
- accountability being undertaken in silos, with no overall view of the criminal justice system.

The inception of the London Policing Board offers an opportunity to review, clarify and refine responsibilities across the MPS, MOPAC, the London Assembly Police and Crime Committee, the Home Office, statutory oversight bodies, and the LPB itself. As the role and remit of the new London Policing Board is developed, the universality principle raises the following questions that would be worth consideration early in its development:

- i. What is the unique role for the LPB, and how does that relate to the established responsibilities of existing officials and bodies?
- ii. How should the LPB's activity align with the Police and Crime Committee, MOPAC's internal audit function provision to the Met, and any other existing audit structures?
- iii. What should be the LPB's relationship with the Home Office?
- iv. How should the LPB's accountability remit relate to the Met's national functions?
- v. Which oversight agency should prevail in disagreements over strategy or performance?
- vi. In relation to each of the potential lines of accountability that the LPB will exercise, how effectively can it meet the other accountability principles that are outlined below?

Principle 2 Independence

The Accountable Policing report differentiates between internal accountability (e.g. police service professional standards) and external accountability provisions. In the case of internal accountability, it is axiomatic that a person whose conduct is being held to account cannot be involved (other than as a subject) in the processes for conducting accountability. In the case of external accountability, an oversight body must have independent resources and personnel.

In so far as the LPB's role is to hold the MPS to account, clearly it will enjoy independence from the service in much the same way that MOPAC and MOPAC's audit functions currently do. Reflecting on the LPB's functional independence invites two observations:

- vii. As a body independent of the MPS, how will the LPB overcome challenges to accountability that have may have inhibited effective accountability through existing mechanisms in MOPAC and the London Assembly's Police and Crime Committee (for example, the Met's complexity and opacity)?
- viii. The London Policing Board is managed by MOPAC and its role is to oversee the MPS. It is not intended to pursue questions of accountability in relation to MOPAC's oversight of the MPS. This suggests the Police and Crime Committee's role in holding MOPAC to account will be critical.

Principle 3 Compellability

Police accountability must inevitably grapple with an extreme asymmetry of access to information. At best, oversight bodies are dependent on police services to know what needs to be overseen. At worst, oversight bodies are denied critical information or given information intended to mislead.

The Accountable Policing report notes that police oversight bodies have limited powers to compel witnesses or information for the purposes of oversight. They may therefore have to rely on soft power (such as cajoling or embarrassing witnesses into attending hearings) to gain information.

Without legal mechanisms of enforcement, all professions and organisations rely on the ethics of individuals and ethical organisational cultures to govern conduct in the public good. What the Accountable Policing report calls soft power, is perhaps better conceptualised as moral compellability. Ethical police leaders should view giving an account of their forces' actions and decisions to be a binding moral obligation, and an opportunity to build trust and confidence reinforcing the principle of policing by consent. Oversight bodies should support the same vision for accountability, and adopt approaches designed to realise and enforce ethical practices of accountability. If both police and oversight bodies managed accountability according to its status as a shared ethical imperative, accountability could potentially become a collaborative enterprise and not a contest between unevenly matched parties.

Following this line of reasoning raises the following question:

- ix. How might arrangements for the new London Policing Board reinforce moral compellability, ensuring its relationship with both the MPS and MOPAC is governed by ethical expectations binding all parties?

Principle 4 Enforceability and redress

Accountable Policing argues that accountability bodies must be able to effect change, notably through enforcing their recommendations and monitoring progress towards them. This is not unproblematic. We observe a pattern throughout the public sector of multiple inquiries and recommendations generating successive action plans that at best only partially succeed in embedding sustained change. Indeed, a compelling section of Baroness Casey's report on MPS culture concerns 'initiative-itis'. In that section the authors included a lengthy list of only the most recent in the series of initiatives launched by MPS in response to successive waves of criticism and recommendations for change.

While neatly depicting the nature of the problem, Baroness Casey's report does not include any suggestions for how initiative-itis might be solved. The imperative to be seen to be doing something, and doing it quickly, remains as strong as ever and is already present in responses to the Casey report. Avoiding this will call, we think, for active partnership between the LPB and the Met, considered discussion of what is achievable, the bravery to prioritise, and the courage to work towards long term change. The question for us is therefore:

- x. How might arrangements for the new LPB avert the possibility that responding to Casey's report, and to the LPB's own demands, results in the same familiar patterns of misdirected energy?

Principle 5 Legality

Accountable Policing notes the centrality of the rule of law to ethical policing, arguing that it is also at the heart of accountability. It states that accountability should be bound by clear accessible rules, be proportionate, have oversight bodies established by law and with the major lines of responsibility set out in law.

- xi. It follows that it would be helpful to set out with clarity the legal status and powers of the LPB, alongside those already established in the Mayoralty and the GLA.

Principle 6 Constructiveness

Accountable Policing proposes that accountability should be responsive, enabling and non-confrontational. They suggest it should be a dialogic process, in which lessons are learned and not just identified. This principle is already reflected in our comments on Principles 3 (compellability) and 4 (enforceability) above.

Accountable Policing also notes that oversight bodies must be responsive to the concerns and needs of those who are subject to policing. In our view, the goal of demonstrating responsiveness must also be balanced with the goal of avoiding initiative-itis. We suspect that it is often the socio-political imperative to be seen to be doing something in response to public concerns that drives this cycle. This is not an argument to ignore public sentiment. Rather, we ask:

- xii. Following the Casey report and the arrival of the new MPS Commissioner, how far have Londoners been engaged in understanding MPS priorities in light of current challenges?
- xiii. How will the LPB establish its normative expectations of policing, agree on what it regards as the most urgent priorities among all of those pressing upon the Met, and develop a mutual understanding of how transformation is to be initiated and sustained?

Principle 7 Clarity

Accountable Policing sets out four requirements for clarity.

a) Clarity of oversight

We have already touched on needs for clarity in the design of oversight above. Accountable Policing emphasises that unnecessary replication of oversight wastes resources, obscures responsibility, and may cause accountability fatigue. Bearing these admonitions in mind:

- xiv. How far is there currently agreement in principle, and demonstration in actual practice, regarding the roles specific to each of the bodies with oversight responsibilities for the MPS?

b) Clarity of expectations

This requirement restates principles explored above.

c) Clarity of expression

Accountable Policing makes the point that accountability bodies' communications must be accessible to the public, with consideration given to how best to engage target audiences. We think this may be a particular responsibility for the LPB.

- xv. How will the LPB ensure that its activities and their outcomes are explained in a straightforward way which illustrates their relevance to all of London's diverse communities.

d) Clarity of data

Accountability activity must make use of and produce data that is meaningful, of good quality, and in proportionate quantity. Clarity of data is closely related to the principle of transparency: see our discussion of the principles of transparency in the next paragraph.

Principle 8 Transparency

We have written about transparency in depth in our recent LPEP report on Openness and Transparency in the MPS (see link in footnote 1). In that report we consider openness and transparency in relationships with individual citizens (we focused on searches exposing intimate parts) and with partners (we focused on working relationships with local government). Each of these has different implications for accountability and hence accountability mechanisms: for example, in the case of individuals there must be effective complaints processes to hold officers and organisation accountable; and in the case of local government, the cultivation of trust and a commitment to good partnership practice is the driver for soft power accountability on both sides.

In relation to MOPAC and the LPB's future activity, we would draw attention to the section of LPEP's Openness and Transparency report that presents some 'cautionary tales' from the research literature on police transparency initiatives. Our cautionary tales describe the adverse unintended consequences of, and the challenges arising in, some well-intended police accountability schemes.

- xvi. How might MOPAC and the LPB use the research evidence on transparency and accountability in designing its work?

Principle 9 Pluralism and multi-level participation

'Who guards the guardians?' Accountable Policing holds it as a truism that if police accountability is for the public good, then the public has to be engaged throughout the accountability processes.

In relation to oversight bodies, Accountable Policing considers the advantages and disadvantages of both democracy (rule by elected bodies) and epistocracy (rule by experts). Democratically elected representatives have the advantage of a mandate from the public that is notionally consenting to be policed. Experts have the advantage of being able to bring specialist knowledge to bear, which may be particularly valuable in challenging the claims of the experts being held accountable. (Of course, some elected representatives may have high levels of relevant expertise, and some experts may enjoy high levels of public support.)

The Accountable Policing argument is that accountability structures will ideally combine both democratic legitimacy and expertise, either through patterns of recruitment to single bodies or through an architecture that encompasses democracy and epistocracy separately.

MOPAC would appear to be well placed to ensure a balance of democracy and epistocracy, drawing both on the mandate of the Mayoralty and the Police and Crime Committee, and on the opportunity to appoint experts to the LPB.

A further question is how to facilitate broader public participation, both in order to secure high quality inputs and data for use by oversight bodies (e.g. in qualitative and quantitative survey data) and to have effective mechanisms for the public to provide their views directly.

In a 2020 LPEP discussion note,³ we considered the ethics of public consultation by police and policing bodies. In summary, we suggested five underlying moral principles for public consultation and engagement:

- Serving needs first: that is, serving the public's own needs in the participation process (e.g. the need to be heard and acknowledged), and through the decisions that come out of consultation processes
- Respecting every person equally both during consultation and in designing its outcomes
- Telling the truth, including about what can and cannot be done by the police and why
- Keeping promises, including about what the consultation can achieve and what you say you will do as a result
- Distributing benefits fairly, both during the consultation (who gets heard, how and when) and in its outcomes (what decisions are made as a result).

We concluded by suggesting some ethical practices to incorporate in future consultative activity. Alongside the moral principles, we think these ethical practices should be incorporated in the architecture of accountability, including the new LPB. Ethical practice raises these questions:

- xvii. Is there transparency about the aims of engagement and about the true role for the public?
- xviii. Are there intelligible rules of engagement, including explanation of how dissenting and incompatible views will be heard?
- xix. How will feedback be provided, and how will decision makers be called upon to justify and be accountable for their decisions?
- xx. Has full engagement been achieved? Has the process reviewed what it means to identify hard to reach communities: it is not the communities, but authority, that is hard to reach. Have the quieter voices been heard?
- xxi. Does the process respect the critical voices of 'opponents', who may be able to offer expertise, alternative ways of thinking, and help generate new solutions?

Principle 10 'Recognition' and 'Reason'

Accountable Policing's principle of recognition is about provision of participatory spaces for public deliberation, and we have already addressed this in the paragraph above.

The principle of reason sets a standard for public participation and deliberation, so that "unreasoned claims lacking a base in evidence for particular levels of policing provision are not treated as immutable facts of political life but are subject to democratic scrutiny".⁴ We take this to refer, for example, to issues such as the evidence base for stop and search, grounds for deployment of Live Facial Recognition, or policing presence in and around schools.

This principle calls for reflection on the part of accountability bodies and police representatives:

³ http://www.policingethicspanel.london/uploads/4/4/0/7/44076193/lpep_discussion_note_-_ethics_of_public_consultation_sept_2020.pdf

⁴ Accountable Policing p.13

- xxii. How far has the accountability body been prepared to challenge policing orthodoxy, and to what extent have police representatives supplied robust and evidence-based justifications for their policing activities? Have we been able to acknowledge validity in the perspectives and arguments of the other party, and have we modified our views in light of the evidence?

Principle 11 Commit to robust evidence and independent evaluation

To some degree we have already addressed this principle in our comments in the preceding paragraph on Principle 10. However, our focus there is more on the evidence base for policing. Here we ask about the evidence base for the effectiveness of accountability.

The inception of the LPB serves as a timely prompt to consider the available evidence on the effectiveness of pre-existing accountability bodies and how overall accountability performance might be maximised. In light of Principle 11:

- xxiii. How should the LPB itself be evaluated? Evaluation should include gauging how far it proves able to add value to existing arrangements and what accountability arrangements would offer best value for money in future.

Principle 12 Be a learning organisation

This principle extends Principle 11 by speaking to the need to ensure that evidence and evaluation actually changes the way in which organisations work, whether the Met, MOPAC, GLA, Home Office or inspectorates. It is therefore worth considering:

- xxiv. In what ways could the LPB itself exemplify principles of organisational learning?
xxv. How could the LPB support other accountability bodies to be reflective and responsive to evidence and evaluation of their own performance?

Dr Suzanne Shale and Professor Jennifer Brown
On behalf of London Policing Ethics Panel
June 2023