

**POLICE AND CRIME COMMISSIONER FOR
WEST MERCIA**



RECORD OF DECISION

TITLE: Review of Memorandum of Understanding
Ref: PCC/D/2018/31

EXECUTIVE SUMMARY

A Memorandum of Understanding (MoU) which sets out the arrangements for use by the Police and Crime Commissioner of the staff of the Chief Constable was approved in 2014. It has been reviewed annually since then. Over the last year there have been changes to the Force structure with the creation of a Chief Finance Officer and the removal of the Directors of Enabling Services and Finance posts. There have also been legislative changes regarding data protection and police complaints which have required the MoU to be updated.

PROPOSAL

That the revised MoU is adopted and signed by the Police and Crime Commissioner and Chief Constable.

**APPROVAL OF
West Mercia Police and Crime Commissioner**

I hereby approve the above proposal.

Signed

PART 1 – NON-CONFIDENTIAL/EXEMPT FACTS AND FIGURES

SUPPORTING REPORT

- 1.1 Under paragraph 2A of Schedule 1 to the Elected Local Policing Bodies (Specified Information) Order 2011 as amended, Police and Crime Commissioners have a duty to publish information as to any arrangements for use by them of the staff of the Chief Constable under the duty to provide assistance to the Commissioner under section 2(5) of the Police Reform and Social Responsibility Act 2011.
- 1.2 A Memorandum of Understanding (MoU) which sets out those arrangements was approved in 2014. It has been reviewed annually since then. Over the last year there have been changes to the Force structure with the creation of a Chief Finance Officer and the removal of the Directors of Enabling Services and Finance posts. There have also been legislative changes regarding data protection and police complaints which have required the MoU to be updated.

FINANCIAL COMMENTS

There are no financial implications arising directly from this proposal.

LEGAL CONSIDERATIONS

Under paragraph 2A of Schedule 1 to the Elected Local Policing Bodies (Specified Information) Order 2011 as amended, Police and Crime Commissioners have a duty to publish information as to any arrangements for use by them of the staff of the Chief Constable under the duty to provide assistance to the Commissioner under section 2(5) of the Police Reform and Social Responsibility Act 2011.

PUBLIC ACCESS TO INFORMATION

Information in this form is subject to the Freedom of Information Act 2000 (FOI Act) and other legislation. Part 1 of this form will be made available on the West Mercia Commissioner's website. Any facts and advice that should not be made automatically available on request are not included in Part 1 but instead in a separate Part 2 report. There is no Part 2 report.

OFFICER APPROVAL

Chief Executive Officer

Signature *Andy Chapman* Date ...14th December 2018

Memorandum of Understanding

1. Introduction

- 1.1. The principal activity of the Police and Crime Commissioner is to be responsible for the totality of policing, including setting strategic direction, and holding the Chief Constable to account for delivery of effective and efficient policing within West Mercia. The Commissioner also has other responsibilities and obligations in respect of the wider criminal justice and community safety frameworks which are outside the scope of this Memorandum of Understanding (MOU).
- 1.2. The principal activity of the Chief Constable is the delivery of effective and efficient policing. He is responsible for ensuring that the Force is able to deliver its obligations under the strategic policing requirement. In matters of operational independence he is answerable to the law and his position is constitutionally established.
- 1.3. The parties agree to work in co-operation to ensure the effective and efficient delivery of policing services to people who live and work in and visit West Mercia.
- 1.4. Notwithstanding their distinct legal identities, the functions of the Commissioner and the Chief Constable are acknowledged to have such interdependence as to permit the sharing of significant areas of business support. The Policing Protocol Order 2011 issued under the Police Reform and Social Responsibility Act 2011 sets out how their functions will be exercised in relation to each other.
- 1.5. Such sharing of business support is not regarded as the provision of services by one to the other but rather a cooperative arrangement for the effective delivery of business support essential to the operation of both offices.
- 1.6. The Commissioner and the Chief Constable will adopt and implement the following principles with regard to the provision to their respective offices of business support and administration:
 - 1.6.1. That despite their legally distinct identities and their differing roles and responsibilities it is appropriate for the Commissioner and the Chief Constable to work together by way of joint endeavour in order to improve outcomes for local people as set out in the Commissioner's Police and Crime Plan.
 - 1.6.2. There is a need for effective and efficient arrangements to be implemented for the provision of all forms of business support to both the Commissioner and the Chief Constable which would best support them and their respective statutory offices in the discharge of their obligations.

- 1.6.3. There is a need to balance the requirement for effectiveness and efficiency in provision of business support against a need to put in place arrangements which represent best value for money.
- 1.6.4. It is desirable where possible to avoid duplication of functions between the offices of the Commissioner and the Chief Constable.
- 1.7. This MOU is a statement of intent which will underpin the partnership between the parties.
- 1.8. The purpose of this MOU is to define the role of the parties, in particular how those who work for the Chief Constable provides Business Support to the Police and Crime Commissioner, and the expectations of how they will work together. It is not the intention of the Commissioner and the Chief Constable to create legal relations in respect of the arrangements contained within this MOU other than in respect of clause 4 which will be legally binding and governed by and construed in accordance with English Law and the courts of England having exclusive jurisdiction to settle any disputes.
- 1.9. In this MOU, the following expressions have the following meanings:

"Confidential Information"	Any and all information, whether in writing or otherwise, that is disclosed by any party before, on or after the commencement date including, but not limited to, financial information, marketing data, procedures, business plans, lists of funders, personnel data, business relationships, current products, services and anticipated products, services and financial information concerning the disclosing party's business and all disclosures, howsoever made to the other party, in connection with this MOU.
"Date of Commencement"	1 st April 2014 (date when agreement starts)
"MOU"	This Memorandum of Understanding
"Corporate Governance Framework"	A document or set of documents setting out the terms on which the respective functions of the Commissioner and the Chief Constable will be exercised, identifying those functions and the manner in which they may be exercised by the parties' staff.
"Business Support"	The professional, transactional and other services that one party can provide to the other party including but not limited to those services set out in part 3 and the schedule thereto

- 1.10. In this MOU words expressed in any gender shall where the context so requires or permits include any other gender and words expressed in the singular shall where the context so requires or permits include the plural and vice versa.

2. Status of the Parties

- 2.1. The relationship between the parties is that of independent organisations, as each party is a separate corporation sole. This agreement is made between each corporation sole. Nothing in this MOU shall create or be deemed to create a partnership or agency, franchise or employment relationship between the parties.
- 2.2. No fee is payable from one party to another in respect of any services provided within the scope of this MOU. All costs incurred will be auditable and properly accounted for.
- 2.3. The MOU will automatically lapse if either party withdraws from participation in the Corporate Governance Framework.

3. Roles and responsibilities

- 3.1. The parties have a need for support in order to exercise their powers and fulfil their respective duties as set out in the Schedule.
- 3.2. This MOU provides for three circumstances in which business support may be sought from the other party. These are as follows:
- 3.2.1. The Commissioner wishes to seek support from the Chief Constable's staff.
- 3.2.2. The Chief Constable wishes to seek support from the Commissioner's staff.
- 3.2.3. The Commissioner and the Chief Constable agree jointly on the commissioning of work to be undertaken either by the Commissioner's staff, or the Chief Constable's staff, or by both.
- 3.3. Wherever possible, the Commissioner and the Chief Constable will adopt a single policy in these business areas to facilitate the effective and efficient administration and application of those policies by staff.
- 3.4. Policies relating to employment will be agreed jointly by the Commissioner and the Chief Constable, and apply to staff of both the Commissioner and the Chief Constable for ease and efficiency of administration.
- 3.5. The Chief Constable and Commissioner will provide to each other sufficient, timely, continuing Business Support to allow the Commissioner and Chief Constable to function and carry out their duties and achieve their priorities to a timescale either specified at the time such services are requested, or if not specifically notified, to a timescale that they consider reasonable.

- 3.6. The Business Support will be delivered to such a standard by appropriately trained and/or qualified staff/officers as would reasonably be expected to enable the Commissioner or Chief Constable to operate as required.
- 3.7. The Commissioner and Chief Constable will make reasonable efforts to ensure that requests for Business Support are made clearly and sufficiently in advance to allow adequate time to provide an effective service.
- 3.8. Both Commissioner and Chief Constable will exercise their powers and fulfil their respective duties in an efficient and effective manner.

4. Sharing of Information

- 4.1. The Commissioner and the Chief Constable will share information where appropriate to fulfil the purposes of this MOU subject to any conditions imposed by the party providing the information in respect of such disclosure.
- 4.2. The parties acknowledge that the Policing Protocol Order envisages that in order to enable the PCC to exercise the functions of their office effectively, they will need access to information and officers and staff within their force area. Such access to any information must not be unreasonably withheld or obstructed by the Chief Constable and / or fetter the Chief Constable's direction and control of the force.
- 4.3. The Commissioner and the Chief Constable shall ensure compliance with Data Protection legislation through proper application of the governance arrangements contemplated in this MOU. For the purposes of the Data Protection Act 2018 and associated regulations the Commissioner and the Chief Constable remain the data controller for all personal data under their respective control.
- 4.4. For the purposes of the Freedom of Information Act 2000 (FOI) if either the Commissioner or the Chief Constable should receive a FOI request then the Commissioner or Chief Constable as appropriate would be responsible for responding to that request and with any subsequent compliance arrangements required under FOI. Any FOI requests received by either the Commissioner or the Chief Constable which relate to or touch upon the subject matter of this MOU or any matters arising from it would be brought to the attention of the other party as soon as practicable, and where necessary the Commissioner and the Chief Constable will provide reasonable assistance to the other in order to facilitate a timely and compliant response to the FOI request or any subsequent compliance requirement
- 4.5. Other than as envisaged under clause 4.1, both parties agree that, during the term of this MOU, or at any time thereafter, neither they nor any of their employees, agents (including volunteer staff) or sub-contractors, shall divulge, furnish or make accessible to anyone any confidential information unless:

- 4.5.1. at the date of this MOU, the confidential information is already in the public domain or subsequently comes into the public domain through no fault of the other party;
- 4.5.2. the confidential information rightfully becomes available to the other party from sources not bound by obligations of confidentiality
- 4.5.3. the confidential information was available to the other party on a non-confidential basis prior to its disclosure to such party;
- 4.5.4. the other party is required by compulsion of law to disclose
- 4.6. The parties agree that all discussions and negotiations in relation to the provision of services under this MOU shall be carried out on a strictly confidential basis and any statements (either written or oral) to be made in relation to the existence of the negotiations between the parties shall be subject always to written agreement by both parties and the overarching provisions of the scheme of governance.
- 4.7. The disclosure of confidential information is a matter for discussion and agreement between the Commissioner and Chief Constable (or those authorised to act on their behalf).
- 4.8. Any limitation or waiver of the right of confidentiality contemplated in the provisions of this MOU can only be authorised by the Commissioner and the Chief Constable and all staff will remain subject to an obligation of confidentiality in respect of third parties.
- 4.9. Nothing in this MOU should prevent any personnel employed either by the Commissioner or the Chief Constable from disclosing information which they are entitled to disclose under the Public Interest Disclosure Act 1998 provided that such disclosures are made in accordance with the provisions of that Act.

5. Access to premises and personnel

- 5.1. The Commissioner, Deputy Commissioner, Chief Executive, Treasurer and Chief Constable, Deputy and Assistant Chief Constables, shall each have such access to premises and personnel under either parties' direction or control as is required to fulfil their responsibilities.
- 5.2. Access to people and premises by other personnel may be limited according to operational need.

6. Governance

- 6.1. The Chief Constable will at all times have legal direction and control and thus legal liability for all police officers, volunteers and police staff working within their policing area.
- 6.2. The Commissioner's Chief Executive will at all times retain managerial authority and operational control in respect of all staff within the Commissioner's employment.

- 6.3. Subject to the provisions contained in this MOU both the Commissioner and the Chief Constable retain the discretion to task and direct their staff as they in their absolute discretion, see fit.
- 6.4. Any conflict between any instructions issued by either of the parties will be identified by the relevant team and brought to the attention of the parties immediately and where possible prior to implementation. Any instructions that are identified as novel, contentious or repercussive must initially be checked with the instructing party and if not withdrawn or amended formally drawn to the attention of both parties before implementation.
- 6.5. If, due to the volume of work required of that team there is an issue of prioritisation to be resolved or due to any other conflicts arising, such issues will be referred to the Commissioner's Chief Executive or Treasurer and the relevant Assistant Chief Constable or Chief Finance Officer, as relevant.
- 6.6. Whilst it is contemplated that whenever the Commissioner or the Chief Constable wishes to have work undertaken which could be provided by way of cooperative arrangements then such work will be so requested, it is acknowledged that circumstances may arise in which either the Commissioner or the Chief Constable may wish to commission such work from another source and nothing in this MOU shall be deemed to prevent or inhibit such course of action.
- 6.7. If either the Commissioner or the Chief Constable has concerns about the conduct or performance of business support personnel employed by the other then the Commissioner or the Chief Constable as appropriate will report those concerns as soon as practicable to the relevant line manager.
- 6.8. For the avoidance of doubt the Commissioner and the Chief Constable agree that when business support personnel are engaged in work commissioned other than by their employer such an arrangement does not amount to a secondment of their employment and at all times such personnel remain subject to ordinary supervisory and management arrangements.
- 6.9. This MOU shall not fetter the discretion of either the Commissioner or Chief Constable to make such alterations to their staffing resources as they may from time to time see fit including the reorganisation of functions or the deletion of posts.
- 6.10. Posts will be advertised and staff may be moved between the Commissioner and Chief Constable as agreed by them following established policies, practices and procedures.
- 6.11. The parties to this MOU do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

7. Review and Termination

- 7.1. This MOU will commence on the Commencement Date and will remain in force until terminated in accordance with this section.
- 7.2. Within 12 months of the Commencement date of the MOU, and three-yearly thereafter, the parties will undertake a review of the services provided and of the MOU to ensure that the MOU is sufficient to cover all of the areas concerned.
- 7.3. Any notice of termination given under this MOU by either party, which must be for no less than 3 months, must be in writing and may be delivered personally, or sent by e-mail. Notice will be deemed to have been received on the same day.
- 7.4. No variation to this MOU shall be effective unless recorded in writing signed by each of the parties or their duly authorised representatives.

Signed by, for and on behalf of the Police and Crime Commissioner

NameJohn Campion...

Position ...Police and Crime Commissioner ...

Signature.....

Date25th January 2019

Signed by, for and on behalf of the Chief Constable

Name ...Anthony Bangham...

Position ...Chief Constable.....

Signature.....

Date25th January 2019

Schedule of Business Support

A. Communications and Engagement

- A.1. The Commissioner has a statutory duty to publish specified information and a power to provide (whether by publication or other means) information about the exercise of his functions and those of the Chief Constable¹, and duties to produce an annual report² and to make arrangements for obtaining the views of the community on policing including arrangements for obtaining the views of the people in the police area on any proposed police and crime plan and on his proposals for expenditure³.
- A.2. The Commissioner also has the duty, in carrying out any of his functions, to have regard to the views of people in the police area about policing in that area⁴.
- A.3. The Chief Constable also has a duty to make arrangements for obtaining the views of persons within each neighbourhood in the police area about crime and disorder in that neighbourhood and to provide such persons with information about policing in that neighbourhood including the holding of meetings between persons within such neighbourhoods and police officers with responsibility for supervising or carrying out policing in that neighbourhood⁵.
- A.4. The Chief Constable also has a power at common law to publish and request any information to or from the general public where to do so would assist in the prevention or detection of crime or the maintenance of law and order.
- A.5. It is acknowledged that:
- (a) The Commissioner will publish and gather information, views and opinions in respect of crime and disorder in the police area and speak on behalf of the people in the police area regarding policing and crime;
 - (b) The Chief Constable will publish and gather information, views and opinions in respect of crime and disorder and speak on behalf of the Constabulary in connection with the prevention and detection of crime and the maintenance of law and order;
 - (c) The Commissioner and the Chief Constable may wish to express different messages on the same issue.

B. People Services, including Learning and Development

- B.1. The Commissioner has a statutory duty to appoint a chief constable, chief executive and chief finance officer. He also needs to appoint such

¹ S.11 Police Reform and Social Responsibility Act 2011

² S.12 Police Reform and Social Responsibility Act 2011

³ S.96 Police Act 1996 (as amended)

⁴ S.17 Police Reform and Social Responsibility Act 2011

⁵ S.34 Police Reform and Social Responsibility Act 2011

other staff required to exercise the Commissioner's functions⁶. The Commissioner has all the duties and responsibilities in law of an employer in relation to all persons employed by him.

- B.2. The Chief Constable has a corresponding duty to appoint a chief finance officer, and such other staff as he thinks appropriate to exercise the Chief Constable's functions or otherwise assist the police force⁷. He also has the responsibility for appointing and managing all officers below the rank of Chief Constable⁸. The Chief Constable has all the duties and responsibilities in law of an employer in relation to all police officers under his direction and control and any civilian staff employed by him.

C. Professional Standards Department

- C.1. The Chief Constable is responsible for maintaining standards of conduct and performance of officers and civilian staff serving the police force, and managing all complaints against the force, its officers and staff.
- C.2. The Commissioner is responsible for maintaining standards of conduct and performance of his staff, and has a duty to monitor all complaints made against police officers and staff.
- C.3. Both have a duty to ensure that they are kept informed regarding standards of conduct and performance, and a duty to provide the IOPC with such assistance as the IOPC may reasonably require for the purposes of any investigation⁹.

D. Finance

- D.1. The Commissioner is responsible for the police fund¹⁰ and for receiving and managing grants, gifts and loans¹¹. The Chief Constable has a duty to secure good value for money in the exercise of his functions¹². The Commissioner and Chief Constable have a shared responsibility to provide effective management of the policing budget and to secure value for money on behalf of the public they both serve¹³. These duties and responsibilities are managed between the Commissioner's Chief Finance Officer and Chief Constable's Chief Finance Officer and are set out in the Finance Protocol to this Memorandum.

E. Information Assurance

- E.1. Both the Commissioner and the Chief Constable are data controllers and processors and have duties under the Data Protection Act 2018 and Freedom of Information Act 2000.

⁶ Paragraph 6 Sch1 Police Reform and Social Responsibility Act 2011

⁷ Paragraph 4 Schedule 2 Police Reform and Social Responsibility Act 2011

⁸ S.39, 40 Police Reform and Social Responsibility Act 2011, inter alia

⁹ S.15 Police Reform Act 2002 as amended

¹⁰ S.21 Police Reform and Social Responsibility Act 2011

¹¹ S.46 to 48, 92 to 94 Police Act 1996 as amended

¹² S.35 Police Reform and Social Responsibility Act 2011

¹³ Paragraph 39 of the Schedule, Policing MOU Order 2011

F. Goods and Services

- F.1. The Chief Constable has a duty to ensure that the goods and services procured for the use of the Force meet its operational needs.
- F.2. The Commissioner is responsible for ensuring that the goods and services procured for the use of the Force and his own office meet the business needs of the Force and his office¹⁴.
- F.3. The Commissioner and Chief Constable are both responsible for ensuring that the policing estate balances operational and business needs with responsible environmental management and sustainable development¹⁵.

G. Information Technology

- G.1. The Chief Constable has a requirement to ensure that information technology services procured for the use of the Force meet its operational needs.
- G.2. The Commissioner is responsible for ensuring that information technology services procured for the use of the Force and his own office meets the business needs of the Force and his office¹⁶.

H. Risk, Change Services, Performance and Research

- H.1. Both the Commissioner and the Chief Constable need to be able to assess and manage risk, plan and manage change, assess organisational performance and undertake or commission research.

I. Legal Services

- I.1. Both the Commissioner and the Chief Constable need legal advice and representation in order to perform and exercise their respective functions and powers.

¹⁴ S.1(6) Police Reform and Social Responsibility Act 2011

¹⁵ Paragraph 14 Schedule 1 Police Reform and Social Responsibility Act 2011

¹⁶ S.1(6) Police Reform and Social Responsibility Act 2011

Finance Protocol

1. CIPFA Statement on the Role of the Chief Finance Officer

The requirements of the CIPFA statement will be met by both the Police and Crime Commissioner and Chief Constable in relation to their respective Chief Finance Officers.

2. Financial Regulations

The Police and Crime Commissioner's Chief Finance Officer (Treasurer) maintains Financial Regulations and consults on any changes with the Chief Constable's Chief Finance Officer). The Chief Finance Officer is responsible for ensuring that all police officers and police staff are aware of the Regulations.

3. Annual Statement of Accounts

The Treasurer is responsible for the accounting policies and records to be maintained. The Chief Finance Officer is responsible for preparing the accounts and providing supporting documents in accordance with legislation and the requirements of the accounting bodies.

4. Revenue and Capital Budgets

The Chief Finance Officer prepares the Revenue Budget and Capital Strategy in conjunction with the Treasurer. The Treasurer has a specific duty to state in the revenue budget report that the estimates are robust and that reserves are adequate. Budget Monitoring reports are prepared by the Chief Finance Officer in a format approved by the Treasurer.

5. Reserves

The use of all reserves must be approved by the Police and Crime Commissioner, as advised by the Treasurer. The Chief Finance Officer will be responsible for monitoring these reserves and reporting on them on a regular basis.

6. Insurance and Risk Management

The Treasurer and Chief Finance Officer make decisions on appropriate levels of insurance cover jointly. The annual insurance renewal is managed by the Chief Finance Officer. The area of risk management is dealt with in the Force under the supervision of the Deputy Chief Constable.

7. Internal Audit

The Treasurer and Chief Finance Officer have joint responsibility for arranging the provision of Internal Audit. The contents of the audit plan are agreed in conjunction with the Police and Crime Commissioner and the Chief Constable.

8. External Audit

The Treasurer and Chief Finance Officer will jointly ensure close liaison with the external auditors.

9. Treasury Management (Loans and Investments)

The Treasurer is responsible for the Treasury Management Policy and outturn reporting. All loans and investments should be arranged in line with best practice embodied in the CIPFA Code of Practice on Treasury Management. All borrowing undertaken should comply with CIPFA's Prudential Code for Capital Finance in Local Authorities. The Treasurer should decide what investments are to be made and approve any borrowing. The daily management of loans and investments is undertaken by the Chief Finance Officer using policies set by the Treasurer.

10. Banking Arrangements

The Police and Crime Commissioner and Chief Constable will have shared banking arrangements for their main banking requirements. The Treasurer is responsible for banking arrangements and authorising the opening and closing of accounts. The Chief Finance Officer and her staff will deal with the day-to-day operation of the accounts.

11. Income and Debtors

The Treasurer has responsibility for agreeing the records to be kept. The ongoing work is carried out under the supervision of the Chief Finance Officer who is required to establish and monitor appropriate recovery procedures for debts that are not promptly paid.

12. Payments to Creditors

The payments are made by Chief Finance Officer and her staff under arrangements agreed with the Treasurer.

13. Payments to Employees

The Chief Finance Officer has responsibility to make these payments, including pension payments subject to arrangements agreed with the Treasurer.

14. Taxation

The Chief Finance Officer is responsible for maintaining the tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

15. Financial Professional Standards

Both the Treasurer and the Chief Finance Officer must ensure that the finance function is resourced to be fit for purpose. The Treasurer and Chief Finance Officer have joint responsibility for ensuring that financial professional standards are adhered to and that staff receive appropriate training.

16. Issuing Reports under Statutory Provisions

Both the Treasurer and Chief Finance Officer are s151 Officers and as such have to comply personally with the statutory reporting duties placed upon them under various statutory provisions. In exercising these responsibilities they will in all cases consult with each other and the Monitoring Officer before issuing any public reports.