



Police & Crime
Commissioner
for Cheshire



Cheshire
Constabulary

CHAPTER 6

MEMORANDUM OF UNDERSTANDING

October 2022

Memorandum of Understanding
Police & Crime Commissioner for Cheshire and the Chief
Constable for Cheshire

1. Introduction

- 1.1. The Police Reform and Social Responsibility Act 2011 (the 2011 Act) and the Policing Protocol Order 2011 set out the respective roles and responsibilities of the Police & Crime Commissioner (“the Commissioner”) and the Chief Constable. The principal activity of the 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 the policing area. The Commissioner also has other responsibilities and obligations in respect of wider criminal justice and community safety matters 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 Constabulary 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. The Chief Constable is charged with exercising the power of direction and control of officers and staff employed by him in such a way as is reasonable to assist the Commissioner to exercise his functions. The Commissioner requires additional services to supplement his core office of staff (“the OPCC”) which the Chief Constable agrees to provide pursuant to his obligations of assistance and in furtherance of the Commissioner’s and Chief Constable’s joint vision of working together in partnership without compromising the Commissioner’s powers and duty to hold the Chief Constable to account for the performance of the Constabulary’s officers and staff.
- 1.3. The Commissioner and the Chief Constable will adopt and implement the following principles with regard to the provision of support services:
 - 1.3.1. 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.
 - 1.3.2. The need for effective and efficient arrangements for the provision of all forms of support services to both the Commissioner and the Chief Constable which would best support them and their respective statutory offices in the discharge of their obligations.
 - 1.3.3. The 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.

1.3.4. The desirability where possible to avoid duplication of functions within the offices of the Commissioner and the Chief Constable.

14. The MOU is a statement of intent between the parties to work in partnership and to define an effective working relationship between the Commissioner and the Chief Constable, and in particular how those who work for the Chief Constable will support the Commissioner and the OPCC in relation to professional, transactional and business support and other services as set out in this MOU.
15. The purpose of this MOU is to define the role of the parties, and the expectations of how services will be provided. It is not the intention of the Commissioner or the Chief Constable to create legal relations nor enforceable legal rights or liabilities in respect of the arrangements contained within this MOU.
16. In this MOU, the following expressions have the following meanings:

"MOU"	This Memorandum of Understanding
"the Support Services"	The support provided by the Chief Constable and those employed by him to the Commissioner under the terms of this MOU and set out in detail in the Schedule
"Date of Commencement"	6 th May 2015 (date when agreement starts)
"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 and services and financial information concerning the disclosing party's business and all disclosures, howsoever made to the other party, in connection with this MOU.
"Scheme of Governance"	The framework setting out the terms on which the respective functions of the Commissioner and the Chief Constable will be exercised, identifying those powers and the manner in which they may be exercised by the parties' staff which includes the Scheme of Consent/ Delegation and Financial Regulations.

17. The headings in this MOU are for ease of reference only.
18. In this MOU, the singular shall mean the plural and vice versa.

2. Status of the Parties and the Support Services

21. The relationship between the parties is that of independent organisations, as each party is a separate corporation sole. This MOU is made between each corporation sole and is designed to record how each party intends to exercise their statutory functions, in particular under section 2 of the 2011 Act in relation to the Chief Constable. Nothing in this MOU shall create or be deemed to create a partnership or agency, franchise or employment between the parties.
22. The Chief Constable will provide to the Commissioner sufficient, timely, continuing support services to allow the Commissioner and the OPCC to function and carry out their duties and achieve their priorities to a timescale either specified at the time such services are requested/ commissioned, or if not specifically notified, to a timescale that they consider reasonable. The Support Services will be delivered to such a standard by appropriately trained and/ or qualified staff/ officers of the Chief Constable as would reasonably be expected to enable the OPCC to operate as required by the Commissioner.
23. The Commissioner will make reasonable efforts to ensure that requests for the Support Services are made clearly and sufficiently in advance to allow adequate time to provide an effective service.
24. The Support Services to be provided are those professional, transactional and support and administrative services reasonably required by the Commissioner or staff within the OPCC on the Commissioner's behalf within the competencies of the following Departments/ units of the Constabulary as set out in the Schedule. Any additional services or changes to the Schedule may be agreed by the Commissioner and Chief Constable or the Commissioner's Chief Executive and the Deputy Chief Constable.
25. Notwithstanding the obligation of the Chief Constable to provide the Support Services to the Commissioner, the Commissioner may seek the provision of such services from a third party/ parties. The Commissioner and the Chief Constable anticipate that this would occur in the event that either the relevant skills were not available "in house" or there was an isolated piece of work where a conflict of interest appeared to arise. The use of external services under this provision would be in isolated cases.
26. No fee is payable from one party to another in remuneration for any services provided within the scope of this MOU. The Support Services will be provided from the existing budgetary provision from time to time allocated by the Commissioner to the Chief Constable.
27. All assets (i.e. all land and buildings, vehicles, equipment and IT systems) have been retained by the Commissioner. However it is recognised that the Chief Constable, his officers and staff require the use, as necessary, of such assets in furtherance of their obligations

under this MOU and in order to carry out their general responsibilities under the 2011 Act and all other common law and statutory provisions in relation to the provision of policing services. The Commissioner therefore grants the Chief Constable, his officers and staff licence (revocable at his discretion) to use such assets as he considers necessary to enable them to discharge their obligations/responsibilities in this regard.

3. Sharing of Information

31. 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. The Commissioner and the Chief Constable shall endeavour to ensure compliance with Data Protection legislation through proper application of the governance arrangements contemplated in this MOU.
32. For the purposes of the Data Protection Act 2018 the Commissioner and the Chief Constable remain the data controller for any personal information recorded (in whatever format) on any information system under their respective control.
33. 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 the Chief Constable as appropriate would be responsible for responding to that request and with any subsequent compliance arrangements required under FOI. However, as one of the Services under this MOU, the Chief Constable's staff/ officers will provide support to the Commissioner to enable him to carry out his FOI functions. 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.
34. Both parties agree that, during the term of this MOU, or at any time thereafter, neither they nor any of their officers, staff, agents (including volunteer staff) or sub-contractors, shall divulge, furnish or make accessible to anyone any confidential information unless:
 - 3.4.1. 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;
 - 3.4.2. the confidential information rightfully becomes available to the other party from sources not bound by obligations of confidentiality;
 - 3.4.3. the confidential information was available to the other party on a non-confidential basis prior to its disclosure to such party;
 - 3.4.4. the other party is required by compulsion of law to disclose.

35. The parties agree that all discussions and negotiations 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.
36. The disclosure of confidential information is a matter for discussion between the Commissioner and the Chief Constable.
37. Any limitation or waiver of the right of confidentiality contemplated in the provisions paragraph of this MOU applies only to the relationship between the Commissioner and the Chief Constable and all staff/ officers will remain subject to an obligation of confidentiality in respect of third parties.
38. Nothing in this MOU should prevent any staff/ officers 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 or under any other enactment provided that such disclosures are made in accordance with provisions of that Act or other enactment.

4. Governance

41. The Chief Constable will at all times retain direction and control over officers and those staff employed by him.
42. The Commissioner's Chief Executive will at all times retain managerial authority and operational control in respect of the staff within the Commissioner's employment.
43. Both the Commissioner and the Chief Constable retain the discretion to task and direct their staff/ officers as they in their absolute discretion, see fit.
44. The Commissioner will ensure that the Chief Constable is kept informed of the departments/ staff/ officers being utilised to deliver the Support Services to enable him to satisfy his duties as employer of relevant staff (including relevant responsibility in terms of direction and control as well as responsibility for line management).
45. Any conflict between any instructions issued by either of the parties in the process of the provision of any of the Support Services 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 suitably amended formally drawn to the attention of both parties before implementation.
46. If, due to the volume of work required of that team, there is an issue of prioritisation to be resolved, such issues will be referred to the Commissioner's Chief Executive and the Deputy Chief Constable.
47. If the Commissioner has concerns about the conduct or performance of any individuals providing the Support Services to the Commissioner/the

OPCC then the Chief Executive (on behalf of the Commissioner) will report those concerns as soon as practicable to the Deputy Chief Constable.

48. Any limitation or waiver of the right of confidentiality contemplated in the provisions paragraph of this MOU applies only to the relationship between the Commissioner and the Chief Constable and all staff/ officers will remain subject to an obligation of confidentiality in respect of third parties.
49. For the avoidance of doubt, the Commissioner and the Chief Constable agree that when any individuals are engaged in providing services to the Commissioner/ OPCC, such an arrangement does not amount to a secondment of their employment and at all times such individuals remain subject to ordinary supervisory and management arrangements.
- 4.10 Subject to the restrictions in the Scheme of Consent/ Delegation this MOU shall not fetter the discretion of the Chief Constable to make such alterations to his staffing resources which may impact upon the provision of the Support Services as he may from time to time see fit including the reorganisation of functions or the deletion of posts. However before making any such alterations the Chief Constable will consult the Commissioner.

5. Dispute Resolution

51. A dispute concerning the provision of the Support Services (including the timeliness of their provision), which cannot be resolved between the staff concerned of the Commissioner and the Chief Constable shall be settled by the Commissioner's Chief Executive and Deputy Chief Constable.
52. A dispute that cannot be resolved between the Chief Executive and the Deputy Chief Constable will be escalated to the Commissioner and Chief Constable.

6. Review and Termination

61. This MOU will commence on the Commencement Date and will remain in force unless terminated or reviewed in accordance with this section.
62. This MOU may be terminated forthwith by agreement of both parties.
63. Within twelve months of the Commencement date of the MOU, and thereafter annually, the parties will undertake a review of the Support Services provided and of the MOU to ensure that the MOU remains fit for purpose.
64. Notwithstanding 6.3 the Commissioner may review (and then change) the nature and extent of any of the Support Services at any time if he concludes, in his absolute discretion, that it is appropriate to do so. If a change is proposed, then this may result in a change in the budget allocated to the Chief Constable. The Commissioner shall give the Chief Constable reasonable notice of any such changes, and in any event a minimum of **three** months, so that the Chief Constable may be able to take appropriate management action to accommodate the change.

65. Any notice given under this MOU by either party must be in writing and may be delivered personally, or sent by e-mail. Notice will be deemed to have been given on the same day.

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

Name

Position

Signature

Date

Signed by, (for and on behalf of) the Chief Constable

Name

Position

Signature

Date

SCHEDULE

Description of the Support Services.

Support provided by the Departments/ officers/ staff listed below will include the following activities and any other support tasks which the Commissioner considers are incidental and/ or ancillary to those outlined.

Estates & Business Services

The provision of services by individuals within the Estates Department to enable the Commissioner to effectively and efficiently manage the land and premises and other fixed assets remaining in the Commissioner's ownership/control, including office services, asset and facilities management, estate management (including identifying savings, environmental issues, maintenance and improvements); project management (including the delivery of capital and revenue funded works) and the management of any contractual arrangements associated with these activities.

Information Technology & Business Services

The provision of services by individuals within the IT & Business Services Department to enable the Commissioner to effectively and efficiently manage and operate those ICT resources (including all IT and telephony/ communications equipment and software) in the Commissioner's ownership/control to ensure they assist him in carrying out his functions and meet his objectives including reviewing the sufficiency and adequacy of such resources to ensure they remain fit for purpose.

Information Management

The provision of information management services to enable the Commissioner to effectively and efficiently manage and store data/ information and records remaining in the Commissioner's ownership/control, including the provision of administrative support and advice to enable the Commissioner to meet his obligations under the Freedom of Information/ Data Protection Acts.

Procurement

The provision of services by individuals within the Procurement Department to enable the Commissioner to effectively and efficiently manage his objectives and obligations under relevant procurement rules/ legislation and implement his Procurement & Commissioning Strategy, in relation to the procurement, management, and termination of contracts to which he is a party.

Planning & Performance Management

The provision of services (including the provision of data the Commissioner reasonably requires relating to the operational and organisational performance of the Constabulary) by individuals involved in the planning and

performance management and research and intelligence activity within the Constabulary to enable the Commissioner to effectively and efficiently manage his objectives and functions under the Police Reform and Social Responsibility Act 2011 (including that of holding the Chief Constable to account).

Human Resources

The provision of services (including professional human resources/ personnel advice) from individuals within the Human Resources Department to enable the Commissioner to effectively and efficiently manage the functions and objectives of his role, including workforce/budget setting, review, monitoring and planning as an employer of individual staff and transactional services in reference to payroll.

Legal

The provision of legal services (including professional legal advice) from individuals within the Legal Services Department (or external sources engaged and managed by such individuals such as counsel or external legal providers) to enable the Commissioner to effectively and efficiently manage the functions and objectives of his role, and in particular to ensure that his interests are furthered and/or protected and actions and decisions remain within the law and available legal powers.

In providing legal services to the Commissioner it is accepted by the Legal Services Department that there will be a requirement to keep the Commissioner's legitimately conducted affairs confidential from third parties including, in some matters, the Chief Constable and his/her staff. The Commissioner accepts that there will be the same duty of confidentiality owed by the Legal Services Department to the Chief Constable and his/her staff.

It is acknowledged that staff of the Legal Services Department must act at all times in accordance with:

- a) their written and implied duties as employees of the Chief Constable; and
- b) the rules of their regulatory associations, primarily the Solicitors Regulatory Authority (Code of Conduct) and the ILEX Professional Standards Board.

Any conflict of interest (potential or actual) which may affect the Legal Services Department acting for the Commissioner and/or Chief Constable will be communicated at the earliest opportunity, and the Chief Executive and Head of Legal Services (or their nominated staff) will discuss the matter and agree a way forward. Where it is agreed that the Legal Services Department may provide legal services to either the Commissioner or Chief Constable but not both, then the standing presumption will be that it represents the Chief Constable. In such a situation the Legal Services Department may, where appropriate, assist the Commissioner to instruct independent legal advisers.

The Commissioner may, irrespective of whether or not a conflict of interest exists, instruct alternative legal services to the Legal Services Department in which event he will notify the Head of Legal Services at the earliest opportunity.

Finance

The provision of financial services, including but not limited to payments and income,

and treasury advice services (including professional financial/ accounting advice) from individuals within the Finance Department to enable the Commissioner (and the Commissioner's Chief Finance Officer on his behalf) to effectively and efficiently manage the functions and objectives of his role, the financial resources of the OPCC and the Constabulary, including the preparation, management and monitoring of revenue and capital budgets, treasury management advisory activities and other support including advice and support relating to compliance with accounting and audit requirements, investments, pensions/ payroll management/ administration so as to ensure that his actions and decisions result in the proper stewardship of available resources, and expenditure which is lawful and in compliance with all relevant statutory and non statutory requirements including the Scheme of Governance, Financial Regulations and the Financial Management Code of Practice.

Communication and Engagement Services

The provision of communications and engagement services from individuals within the Engagement Department to enable the Commissioner to effectively and efficiently manage his functions and objectives regarding the provision of information to, and effective engagement/ consultation with, the public and other stakeholders, including the design and production of media and effective use of relevant media formats/ methods and web based/ on line/ mobile data resources. Further information on the requirements for the provision of these services can be found in the addendum to this Memorandum of Understanding.

Professional Standards

The provision of support from police officers and police staff within the Professional Standards Department to enable the Commissioner to effectively and efficiently manage his functions and objectives regarding the management/ handling of complaints against police officers/ staff.

Risk Management/ Health and Safety

The provision of services and advice to enable the Commissioner to effectively and efficiently manage his functions and objectives in relation to the identification and management of corporate risk and health and safety issues including the responsibility for individual statutory named posts.

Other

Other support, advisory and delivery services required by the Commissioner from time to time from all other functions provided to the Chief Constable and funded by the budget allocated by the Commissioner including project support; diversity and equalities advice, partnerships, and specialisms within the Constabulary (e.g. child protection, domestic violence).