



Office of the Police and Crime  
Commissioner for Surrey

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## **Memorandum of Understanding**

**BETWEEN:**

**THE POLICE AND CRIME COMMISSIONER FOR SUSSEX ('the Commissioner'),**

**and**

**THE CHIEF CONSTABLE FOR SUSSEX POLICE ('the Chief Constable')**

**and between**

**THE POLICE AND CRIME COMMISSIONER FOR SURREY ('the Commissioner'),**

**and**

**THE CHIEF CONSTABLE FOR SURREY POLICE ('the Chief Constable')**

### **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 the policing area. The Commissioner also has other responsibilities and obligations in respect of the wider criminal justice, community safety frameworks and commissioning of services for victims which are outside the scope of this Memorandum of Understanding (MOU).
- 1.2 The Commissioner has a duty under section 1 of the Police Reform and Social Responsibility Act 2011 ('the Act') to (a) secure the maintenance of the force and (b) secure that the force is efficient and effective. In addition, the Commissioner has incidental powers under paragraph 14 of Schedule 1 of the Act enabling the Commissioner to do anything which is calculated to facilitate or is incidental to the exercise of his or her functions. This includes entering into contracts or other agreements.
- 1.3 The principal activity of the Chief Constable is the delivery of effective and efficient policing. The Chief Constable is responsible for ensuring that the Force is able to deliver its obligations under the strategic policing requirement. In matters of operational independence the Chief Constable is answerable to the law and their position is constitutionally established.

- 1.4 Section 2(5) of the Act provides that the Chief Constable must exercise their powers of direction and control over the police force and its civilian staff in such a way as is reasonable to assist the Commissioner in the exercise of his or her functions. In addition, paragraph 7(1) of Schedule 2 to the Act provides that 'a chief constable may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of the functions of chief constable'.
- 1.5 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 PCC therefore grants the Chief Constable, his officers and staff licence (revocable at the PCC's discretion) to use such assets as s/he considers necessary to enable them to discharge their obligations/responsibilities in this regard.
- 1.6 The parties agree to work in co-operation to ensure the effective and efficient delivery of policing services to people who live work and visit the policing area.
- 1.7 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.
- 1.8 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.
- 1.9 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:
  - 1.9.1 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.
  - 1.9.2 The need for effective and efficient arrangements 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.
  - 1.9.3 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.
  - 1.9.4 The desirability where possible to avoid duplication of functions within the offices of the Commissioner and the Chief Constable.
- 1.10 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.
- 1.11 The purpose of this MOU is to define the role of the parties, 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.

1.12 In this MOU, the following expressions have the following meanings:

"MOU"	This Memorandum of Understanding
"Services"	The support provided by the parties to the MOU
"Commencement Date"	1 <sup>st</sup> April 2014 (date when MOU 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"	Those documents that set out the terms on which the respective functions of the PCC and the CC will be exercised, identifying those powers and the manner in which they may be exercised by the parties' staff.
"Cooperative Arrangements"	Has the meaning set out in paragraph 4.3

1.13 The headings in this MOU are for ease of reference only and have no legal effect.

1.14 In this MOU, the singular shall mean 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. Nothing in this MOU shall create or be deemed to create a partnership of agency, franchise or employment between the parties.

2.2. 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.

2.3. 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.

2.4. 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 Force(s) as set out in the Schedule (attached).

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.

### **3. Sharing of Information**

- 3.1 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. The Commissioner and the Chief Constable shall ensure compliance with Data Protection legislation through proper application of the governance arrangements contemplated in this MOU.
- 3.2 For the purposes of the General Data Protection Regulation (GDPR) EU 2016/679 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.
- 3.3 For the purposes of the General Data Protection Regulation, where either party is processing personal data as a data processor that party shall ensure that it has in place appropriate technical and organisation measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 3.4 For the purposes of the Freedom of Information Act 2000 (FOI) if either the Commissioner or the Chief Constable should receive an 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.
- 3.5 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:
  - 3.5.1 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;
  - 3.5.2 the confidential information rightfully becomes available to the other party from sources not bound by obligations of confidentiality;
  - 3.5.3 the confidential information was available to the other party on a non-confidential basis prior to its disclosure to such party;
  - 3.5.4 the other party is required by compulsion of law to disclose.
- 3.6 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.

- 3.7 The disclosure of confidential information is a matter for discussion between the Commissioner and Chief Constable.
- 3.8 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 will remain subject to an obligation of confidentiality in respect of third parties.
- 3.9 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 provision of that Act.

#### **4. Governance**

- 4.1 Subject to the provisions contained at paragraph 1.4 of 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.
- 4.2 This MOU provides for three circumstances in which business support may be sought from the other party. These are as follows:
  - 4.2.1 The Commissioner wishes to seek support from the Chief Constable's staff.
  - 4.2.2 The Chief Constable wishes to seek support from the Commissioner's staff.
  - 4.2.3 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.
- 4.3 These proposed arrangements collectively are known as cooperative arrangements.
- 4.4 The business support may be sought in the following areas:
  - Estates, Fleet, Information Technology, Information Management, Procurement, Planning and Performance Management, Human Resources, Legal, Finance, Communications and Engagement Services, Professional Standards, Risk Management/Health and Safety as outlined in the Schedule of Services here to attached.
- 4.5 Either of the parties may assign work to staff subject to a cooperative arrangement and use the existing resources within that team. This will be in accordance with agreed practices between the Commissioner and Chief Constable.
- 4.6 Any conflict between any instructions issued by either of the parties through a cooperative arrangement 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.
- 4.7 If, due to the volume of work required of that team there is an issue of prioritisation to be resolved, the issue will be referred to the Commissioner's Chief Executive and the Deputy Chief Constable, and if they cannot resolve such issue within 7 days then either party may refer the issue to the Commissioner and the Chief Constable to resolve.

- 4.8 Neither the Commissioner nor the Chief Constable will seek to impose any form of recharge on the other in respect of staffing costs arising out of the cooperation arrangements but either the Commissioner or the Chief Constable may be entitled to recover from the other any additional third party costs subject to agreement between the Commissioner's and the Chief Constable's chief finance officers.
- 4.9 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 are not available "in house" or there is an isolated piece of work where a conflict of interest appears to arise. The use of external services under this provision would be in isolated cases.
- 4.10 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.
- 4.11 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.
- 4.12 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. However before making any significant alterations to staff that may provide business support under this MOU the Commissioner or the Chief Constable as applicable will consult the other.
- 4.13 Posts may be advertised and staff may be moved between the Commissioner and Chief Constable as agreed by them following established policies, practices and procedures.
- 4.14 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 1969 by any person who is not a party to it.

## **5. Access to premises and personnel**

- 5.1 The Commissioner and Chief Constable and their senior officers shall each have reasonable, qualified access to premises and personnel under either parties' direction or control.
- 5.2 Access to people and premises by other personnel may be limited according to operational need.

## **6. Dispute Resolution**

- 6.1. 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.

- 6.2. A dispute that cannot be resolved between the Chief Executive and the Deputy Chief Constable will be escalated to the Commissioner and Chief Constable.

## **7. Review and Termination**

- 7.1 This MOU will commence on the Commencement Date and will remain in force in accordance with this section.
- 7.2 Within 12 months of the Commencement Date of the MOU, the parties will undertake a review of the Police and Crime Plan and of the services provided and of the MOU to ensure that the MOU is sufficient to cover all of the areas concerned.
- 7.3 The MOU is subject to review on a change in either of the corporations sole.
- 7.4 Either party may terminate the MOU by giving 3 months notice to the other party that they wish to withdraw from the arrangements.
- 7.5 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.
- 7.6 Notices will be delivered or sent to the addresses of the parties as given at the head of this MOU or to any other address notified in writing by any party to the other parties for the purpose of receiving notices after the commencement date of this MOU.
- 7.7 No variation to this MOU shall be effective unless in writing signed by duly authorised representatives of each of the parties.

Signed by the Police and Crime Commissioner for Surrey

Name .....

Position .....

Signature .....

Date .....

Signed by the Chief Constable for Surrey

Name .....

Position .....

Signature .....

Date .....

Signed by the Police and Crime Commissioner for Sussex

Name .....

Position .....

Signature .....

Date .....

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Date .....