



SPA / Police Scotland Joint Memorandum of Understanding (MOU) on engagement and communication relating to new and emerging strategy, policy or practice in areas of significant public interest.

June 2021

Introduction

1. This Memorandum of Understanding (MOU) seeks to provide a guide to early and effective identification, and appropriate engagement, between both organisations when Police Scotland is considering a new and emerging strategy, policy or practice to improve the safety and wellbeing of persons, localities and communities in Scotland, and which are likely to be of significant public interest.
2. The aim is to provide early recognition of the public import of the issue, a focus on understanding the public interest around it, and a shared critical pathway for assessment and anticipated outcomes. The MOU will use existing Police Scotland management controls and advisory mechanisms, and SPA governance systems, to achieve the aim.

Overarching principles of early engagement and communication

3. There is a statutory duty on policing, as set out in policing principles in the Police and Fire Reform (Scotland) Act 2012, to work in a manner which is collaborative with partners, accessible and engaged with local communities, and with a clear emphasis on prevention.
4. In seeking to fulfil the main purpose of policing in a way that is consistent with the principle of policing by consent and the statutory principles of engagement and accessibility, Police Scotland staff will work proactively - and at the earliest practicable stage of a new strategy, policy or practice development process - with SPA staff, where the issue is assessed as likely to be of significant public interest. The joint objective should be, as soon as possible, to generate transparent public discussion and engagement on the issue, to enable the widest civic awareness, assurance and contribution to it, and to inform decision-making.
5. The impacts and benefits of many policy issues within policing are felt across communities and civic partners, including local government. Early Police Scotland engagement with the SPA should identify these impacts and benefits. Associated risks, whether relating to service quality, reputational, governance or public confidence matters should also be

identified and where possible proactively mitigated through an agreed co-ordination plan.

6. The Joint MOU will apply to new and emerging areas of strategy, policy or practice, but the use of the Protocol should lead to the identification of broader, thematic, issues for policing meriting broader strategic discussion. For example, Police Scotland may seek to introduce new technologies to protect citizens against the growing range of digital threats and risks. There is, however, the need for a wider, contextual, discussion about the appropriate balance of duties of policing in Scotland, alongside the safety and privacy expectations and rights of the public.
7. Police Scotland will build on its consistent demonstration of, and commitment to, ethical policing and its organisational values of integrity, fairness, respect and commitment to upholding human rights. Openness and transparency in its decision-making on significant matters of new strategy, policy or practice aims to further strengthen the principle of policing by consent across all Scottish communities.
8. The Chief Constable's responsibilities for improving the safety and well-being of persons, localities and communities in Scotland often require dynamic and responsive decision making. The Chief Constable is required and empowered in statute and common law to take such decisions in relation to strategy, policy or practice as circumstances require. It may not, therefore, be possible for this Memorandum of Understanding to cover every situation or eventuality that may arise as the Chief Constable discharges these responsibilities. In those exceptional circumstances the spirit of the Memorandum of Understanding should be applied.

Operational independence and accountability of the Chief Constable

9. This MOU recognises the balance and alignment between (i) the Chief Constable's operational independence and responsibilities, and (ii) the Chief Constable's statutory accountability to the Scottish Police Authority as set out in Police and Fire Reform (Scotland) Act 2012.
10. The principle of operational independence of the Chief Constable and the Police Service in Scotland is long established at common law, and is a crucial feature in any democracy. Unambiguous respect for, and protection of, both the principle and practice of this operational independence is the most effective way of ensuring that Police Scotland can discharge its statutory duties and responsibilities fairly and consistently, and in a manner which has respect for the human rights of every citizen at its core.
11. The Police and Fire Reform (Scotland) Act 2012 sets out in statute the arrangements for policing in Scotland, including oversight and accountability provisions. The provisions of the 2012 Act underpin the critical common law principle of operational independence, making it clear that operational decision making rests with the Chief Constable,

who is accountable to the people of Scotland, through the Scottish Police Authority, for the policing of Scotland. The 2012 Act provides that the Chief Constable must ensure that the policing of Scotland be carried out within certain parameters, and with due regard to the policing principles and strategic police priorities.

12. There is no provision in the legislation which allows Scottish Ministers or the Scottish Police Authority to direct the Chief Constable in relation to any specific operational activity. The Act specifically prohibits Scottish Ministers from providing direction in respect of a specific operation being (or to be) carried out by the Police Service, or the way in which the Police Service is carrying out (or is to carry out) a specific operation. The SPA are an important element of this protection from any political attempt to influence policing.
13. Therefore, nothing in this MOU will undermine or diminish the critical principle of the operational independence of the Chief Constable.

Areas and issues covered by this Memorandum of Understanding

14. The Police Scotland Lead will ensure, wherever possible, early engagement with the SPA Chief Executive over the relevant issue, to assess whether the process described is appropriate and whether the issue meets the following criteria: namely, that it is likely to cause significant ethical, privacy or human rights concerns to be raised by stakeholders and the public, or to have a significant impact on public perceptions of, or confidence, in policing.
15. Police Scotland will ensure that, at the appropriate stage, any significant new strategy, policy or practice developments are subject to tests of legality and proportionality, Community Impact Assessments and Human Rights and Equality Impact Assessments. SPA staff will review these assessments, and may seek assurances from Police Scotland on the details of the assessments and the degree to which there has been public engagement.
16. The SPA will actively collaborate in advance engagement with Police Scotland over new strategy, policies or practice development proposals which fall within the remit of this MOU.
17. The signing of this Memorandum of Understanding, by the Chief Constable and the Chair of the SPA Board, is an agreement that the principles herein should be applied as the default approach to the relationship between both organisations, in regard to policy development.
18. On occasion, there may be specific areas of strategy, policy or practice where it is appropriate - in the interests of both strategic alignment and

tactical delivery - to appoint a SPA Staff Lead, as nominated by the SPA Chief Executive Officer, in addition to the Police Scotland Senior Lead, to act as **Joint Leads** for that specific issue. These appointments will be by the Chair of the SPA Board and the Chief Constable after discussion of the issue. The Chief Constable and SPA Chair may also consider whether it is appropriate to establish an Independent Advisory Group or dedicated SPA Oversight Group for this issue.

Stages of the Memorandum of Understanding

19. The following stages should form part of the process arising from the approach described in this Joint Memorandum of Understanding. These stages are purposefully not over-described, to ensure that the MOU facilitates a meaningful focus on the issue and its identified public purpose, the associated benefits and risks, understanding its impact through an early public conversation and discussion, and using all of this information to transparently address the views of the public, key partners and stakeholders.

20. The stages are as follows;

Identification and Assessment

- Develop a short description of the issue and a description of the clear and defined purpose to improve the safety and well-being of persons, localities and communities in Scotland.
- An assessment of whether and how it meets the remit of this MOU (particularly in terms of public import and impact).
- Should it be assessed that the brief does not meet the remit of the MOU, a written rationale will be recorded and retained.
- An outline of clear timelines for proposed implementation.
- There should be a strong emphasis, whether instigated by Police Scotland or the SPA, on (a) the early identification of issues connected to public/political/partner confidence, (b) an outline of the key ethical, privacy or human rights considerations, and (c) other associated risks.

Communication, Engagement and Delivery

The Police Scotland Lead, and SPA Joint Lead where appointed, should consider the following;

- If appropriate, set out shared outcomes for the issue.
- Agree a critical path, to ensure that the development and testing of the issue is subject to regular oversight and discussion in both the SPA and Police Scotland governance and assurance fora.
- Agree a plan to use existing bodies (for example, Police Scotland Ethics Panels or existing Local Authority or COSLA advisory or scrutiny mechanisms) to test any ethical, privacy and any human rights, and wider public or partner confidence issues associated the issue.

- Develop an engagement plan for the issue, to include communications and stakeholder management, to ensure (a) a full and transparent discussion of the issue, and (b) the most informed decision-making on next steps/approval. Early consideration should be given to the use of public surveys, and convening interest or focus groups to promote debate and understanding of the issue.
 - Ensure that the engagement and communications process includes Staff Association and Trade Union views on the issue.
 - Where at all possible, use best practice/available evidence from other jurisdictions and sectors, engaging academic partners where appropriate.
 - Consider the appropriateness and value of a test deployment, and formal external or internal evaluation prior to full implementation.
 - Plan to establish a baseline and post implementation review process to produce, within a reasonable time, a short Post-Implementation Report on impact evaluation, delivered or projected benefits and any wider organisational learning.
21. The Joint MOU will be reviewed initially on a six-monthly basis, and approached as an iterative process to maximise public engagement and support.