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

Introduction

This Memorandum of Understanding (MOU) seeks to provide a guide to early and effective identification, and appropriate engagement, between the Scottish Police Authority and Police Scotland. This applies when the service is considering a new or significantly revised 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.

The aim is to acknowledge issues early, develop a fully informed understanding of the public interest issues regarding it, and agree the critical pathway for comprehensive assessment and anticipated outcomes. The MOU will use existing Police Scotland management controls and advisory mechanisms, and the Authority's established governance framework, to achieve this aim.

1. Principles of early engagement and communication

There is a statutory duty on policing, set out 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.

Police Scotland will work proactively with the Authority where an issue is assessed as likely to be of significant public interest. This should be at the earliest practicable stage of the development process of a new or revised strategy, policy, or practice. The joint objective is to better inform decision making, through wide and transparent public discussion and engagement at the earliest opportunity. Enhancing decision making by enabling the widest civic awareness, understanding of the issue, and providing assurance that relevant partners and stakeholders have had an opportunity to consider and contribute to it.

The impacts and benefits of many policy issues within policing are felt across communities and civic partners, including local government. Early engagement with the Authority 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 coordinated plan.

The MOU will apply specifically to new, revised, and emerging areas of strategy, policy, or practice; however, the use of the MOU principles will support the identification of broader, thematic, issues for discussion and consideration. 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.

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.

The Chief Constable's responsibilities for improving the safety and well-being of persons, localities and communities in Scotland may in time critical situations 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.

2. Operational independence and accountability of the Chief Constable

This MOU recognises the balance and alignment between the Chief Constable's operational independence and the Chief Constable's accountability to the Scottish Police Authority as set out in Police and Fire Reform (Scotland) Act 2012.

The principle of operational independence of the Chief Constable and Police Scotland is long established and is a crucial feature in any democracy. Explicit respect for, and protection 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.

The Police and Fire Reform (Scotland) Act 2012 sets out 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.

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 Authority is an important element of this protection from any political attempt to influence policing.

Therefore, nothing in this MOU will undermine or diminish the critical principle of the operational independence of the Chief Constable.

3. Areas and issues covered by this Memorandum of Understanding

Police Scotland will ensure, wherever possible, early engagement with the Authority, to assess whether the new or revised strategy policy or practice meets the following criteria:

- 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.

Police Scotland will ensure that, at the appropriate stage, any significant new or revised strategy, policy or practice developments are subject to tests of legality and proportionality, Human Rights and Equality Impact Assessments, Data Protection Impact Assessments, Community Impact Assessments, and any other appropriate assessment process which will inform the public interest considerations. The Authority will review these assessments and may seek further assurances from Police Scotland on the details of the assessments and the degree to which there has been partner and public engagement.

The Authority will actively collaborate in early engagement with Police Scotland over new or revised strategy, policies or practice which fall within the remit of this MOU.

The signing of this Memorandum of Understanding, by the Chief Constable and the Chair of the Authority, is an agreement that the principles should be applied as the default approach to the relationship between both organisations, regarding changes to policing which are likely to generate significant public interest.

On occasion, there may be specific areas of strategy, policy, or practice where it is appropriate for the Authority and Police Scotland to jointly lead engagement and communication on the issue. The Authority and Police Scotland will respectively appoint lead officials to take this work forward. The Chief Constable and Authority Chair may also consider whether it is appropriate to establish an Independent Advisory Group or dedicated Authority Oversight Group for the issue.

4. Stages of the Memorandum of Understanding

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 prescribed, to ensure that the MOU facilitates a meaningful focus on the issue and its identified public purpose. It also allows consideration of the associated benefits and risks, understanding its impact through an early public conversation and discussion, and using this information to transparently consider the range of views of the public, key partners, and stakeholders. The stages are as follows.

5. Identification and Assessment

- Develop a short description of the issue and a description of the clear and defined purpose to improve the safety and wellbeing 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 interest 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 Authority, 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.

6. Communication, Engagement and Delivery

Police Scotland and the Authority 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 through the Authority and Police Scotland governance .
- 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 include Staff Association and Trade Union views on the issue.
- Where 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.

The MOU will continue to be reviewed annually and approached as a flexible and learning focused process to maximise public engagement and understanding of the justification for changes to policing in Scotland.



Fiona McQueen CBE
Chair
Scottish Police Authority



Jo Farrell
Chief Constable
Police Scotland