

SECOND MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE POLICE AND CRIME COMMISSIONER FOR
NORTH YORKSHIRE**

and

**THE CHIEF CONSTABLE OF NORTH YORKSHIRE
POLICE**

THIS SECOND MEMORANDUM OF UNDERSTANDING IS MADE THE *first*
DAY OF *April* 2014

BETWEEN

THE POLICE AND CRIME COMMISSIONER FOR NORTH YORKSHIRE

and

THE CHIEF CONSTABLE OF NORTH YORKSHIRE POLICE

(and where appropriate collectively called "the Commissioner and the Chief
Constable")

1.0 AIM

- 1.1. The Commissioner and the Chief Constable consider that the tenor of their relationship should be one of goodwill, professionalism, openness and trust in line with paragraph 8 of the Protocol.
- 1.2. Both consider that this standard, set out in their First Memorandum of Understanding, has been met since they took office.
- 1.3. This Second Memorandum of Understanding, amending and supplementing the first, aims to set out in formal terms the shared vision for
 - 1.3.1. ways of working which respect, but are not constrained by, the conventional ways of characterising the relationship between a local policing body and a chief officer;
 - 1.3.2. collegiate decision making and effective ways of undertaking scrutiny
 - 1.3.3. the kinds of decisions which should be treated as significant public interest issues;
 - 1.3.4. high-level provision for information-sharing between the two corporate bodies
 - 1.3.5. catering for dispute resolution, in the unlikely event that it occurs;
 - 1.3.6. underlining the commitment of the Commissioner and the Chief Constable to good governance and lawful decision making.
 - 1.3.7. supporting and embedding the Nolan principles
 - 1.3.8. agreed working definitions of legal expressions;

2. NATURE OF THIS DOCUMENT

2.1. This document is not contractual in nature and is not itself intended to be legally binding.

3. JOINT CORPORATE SERVICES & OPERATIONAL INDEPENDENCE

3.1. The Commissioner and the Chief Constable recognise and respect the constitutional convention that separates the exercise of police powers from the executive

3.2. They recognise and respect the established legal principle that in the discharge of police powers, a constable acts upon his own responsibility; and that a constable is the agent neither of the Commissioner nor the Chief Constable

3.3. The Commissioner and the Chief Constable have made a Transfer Scheme which underpins their cooperative approach to service provision.

3.4. In order to make embed those joint working conventions they will

3.4.1. respect the unfettered independence of the office of constable;

3.4.2. respect the Chief Constable's accountability to the law for the exercise of police powers

3.4.3. note and respect the non-exhaustive list of examples of the Chief Constable's direction and control as set out at paragraph 33 of the Protocol

3.4.4. give effect to the accountability framework set out in the Protocol

- 3.4.5. commit to making public accountability work, for the benefit of the delivery of efficient and effective policing.
- 3.4.6. note and respect the development, at common law, of the concepts of operational independence and of direction and control as considered by the courts from time to time.
- 3.4.7. allow their relationship to be guided by those authorities, but to establish such new and innovative divisions of responsibility for the exercise of duties and responsibilities as appear to them to be in the interests of efficiency and effectiveness
- 3.4.8. in principle, operate on the basis that any organisational sub-division (whether directorate, department, team, or unit) whose remit does not include the exercise of police powers, could in principle provide services on a joint basis, to both corporate bodies
- 3.4.9. provide staff to each other where there is a need to do so, ensuring that proper account is taken of the need for staff to plan and organise their capacity where they are called upon to serve more than one corporate objective

4. WAYS OF WORKING

- 4.1. In line with the spirit of this Memorandum, the Commissioner and the Chief Constable declare their intent to work in close cooperation. They consider that in so doing their ability to discharge their respective remits is likely to be enhanced

4.2. Significant Public Interest

4.2.1. The Commissioner and the Chief Constable trust and rely upon senior officers and staff to exercise their thinking by reference to experience, instinct and good judgment. The following guidance has been provided for consideration (although this list is not exhaustive) when deciding if a decision is of 'significant public interest':

4.2.1.1. Matters which are important to achieving the aims and objectives set out in the Police & Crime Plan; and/or

4.2.1.2. Matters which present high risk(s) in achieving the Police & Crime Plan objective(s); and/or

4.2.1.3. Matters which involve

4.2.1.3.1. Investment

4.2.1.3.2. Income other than cost recovery

4.2.1.3.3. Innovation

4.2.1.4. Matters which are likely to impact on public confidence in North Yorkshire Police, the Police & Crime Commissioner for North Yorkshire, or the police service in general; and/or

4.2.1.5. Matters which involve a point of law of public importance or of importance to the police service as a whole; and/or

4.2.1.6. Matters which are reasonably considered to be ones which the public would expect to see published Decision Notices in the interests of public accountability.

4.3. Exchange of Information

4.3.1. The Commissioner and the Chief Constable will in practice meet formally and informally as often as is necessary in order to exchange information as part of their close cooperation

4.3.2. Such meetings will be complemented by the provision by the Chief Constable of information in accordance with the provisions

of the 2011 Act, the Protocol and the Financial Management Code of Practice and will include such information as the Commissioner reasonably requires in order to fulfil the functions of the Commissioner

4.3.3. The Commissioner and the Chief Constable will only adopt formal Information Sharing Agreements as may be necessary to regulate the sharing of information where such Agreements may be required by law;

4.3.4. the Chief Constable shall not be obliged to share information where to do so would contravene the law.

4.4. Public Engagement

4.4.1. The Commissioner and the Chief Constable will cooperate closely on matters of public communication and engagement, in order to avoid duplication and in order to ensure that the clearest possible messages are communicated to the communities served by the Commissioner and the Force.

4.5. Statutory Officers

4.5.1. The Commissioner and the Chief Constable

4.5.1.1. record in this memorandum their shared commitment to facilitating the proper exercise of the role of the Monitoring Officer and of their respective Chief Finance Officers; and in particular

4.5.1.2. will adopt Protocols about how their statutory powers of assurance and intervention are to form part of the system of assurance and good governance.

4.6. Resolving Differences

- 4.6.1. In line with the spirit of this Memorandum, the Commissioner and the Chief Constable are reluctant to set out anything but the broadest of frameworks to cater for resolution of dispute between them.
- 4.6.2. They declare their intent to resolve dispute between them, howsoever arising, by dialogue leading to mutual consent.
- 4.6.3. Where for any reason such dialogue does not lead to resolution, the Commissioner and the Chief Constable will select such other method(s) of dispute resolution as appear to them most appropriate in the circumstances, having regard to the maintenance of effective working relationships between them; to the cost of the method(s) in question and to the public interest in achieving resolution.
- 4.6.4. The Commissioner and the Chief Constable view recourse to litigation as reserved to matters involving points of law of public importance; where the public interest appears to be best served by achieving certainty as to the meaning of the law.

4.7. Transparency

- 4.7.1. The Commissioner and the Chief Constable record in this memorandum their shared commitment to openness in the exercise of their powers and duties and in the use of public funds, including but not limited to compliance with
- 4.7.1.1. the Freedom of Information Act 2000 (and guidance issued from time to time by the Information Commissioner in respect of compliance with the Act)
- 4.7.1.2. the Elected Local Policing Bodies (Specified Information) Order 2011

4.8. Equalities & Human Rights

4.8.1. The Commissioner and the Chief Constable record in this memorandum their shared commitment to achieving and where possible exceeding their duties under the public sector equality duty and in particular to

4.8.1.1. Eliminate unlawful discrimination and harassment

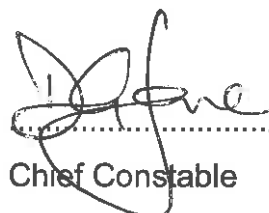
4.8.1.2. Promote equality of opportunity

4.8.1.3. Respect and facilitate the Convention rights

4.8.2. Equality Analysis has been undertaken to assess any potential equality impact upon people with one or more protected characteristics.



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Commissioner



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Chief Constable

Annex A**INTERPRETATION**

In this Memorandum of Understanding the following terms have the following meanings:-

"1996 Act"	Police Act 1996
"2011 Act"	Police Reform and Social Responsibility Act 2011
"the Protocol"	The Policing Protocol set out in the Schedule to the Policing Protocol Order 2011
"the Police Area"	The county of North Yorkshire and the non-metropolitan district of York
"the Nolan Principles"	The seven principles set out in the First Report of the Committee on Standards in Public Life (themselves set out in Annex C hereto.)

Annex B**WORKING DEFINITIONS**

The Commissioner and the Chief Constable have arrived at a common understanding of the meaning of certain expressions contained within the 2011 Act and the Protocol which is consistent with their intended way of exercising their functions in the police area.

Paragr aph(s)	Expression	Meaning
1 24	"statutory functions"	Powers and/or duties afforded by primary or secondary legislation to a party.
17 (g)	"efficient"	done in a way which minimises waste of resources and makes the best use of such resources
17 (g)	"effective"	done in a way which achieves intended outcomes
17 (h)	"functions of the police force"	Functions which are the responsibility of <ul style="list-style-type: none"> • the Chief Constable; and/or • persons under the direction and control of the Chief Constable; and/or • persons employed by the Chief Constable
22	"police powers"	powers and duties (whether conferred by any enactment or exercisable by virtue of the common law) afforded to

		<p>(a) constables pursuant to the attestation;</p> <p>(b) other persons (such as community support officers, investigating officers and detention officers) pursuant to a designation</p> <p>in pursuit of the preservation of the Queen's peace, the prevention and detection of crime, and the protection of life and property and include but are not limited to</p> <ul style="list-style-type: none"> • Powers to stop and search • Powers to arrest • Powers to detain • Powers of entry, search and seizure • Powers to use force.
23(a)	"the attestation"	The Form of Declaration set out at Schedule 4 to the 1996 Act
23 (b)	"police staff equivalents"	<p>Members of police staff regardless of grade whose role profile stipulates that they are permanently appointed to perform the duties of</p> <ul style="list-style-type: none"> • Chief Constable's Chief Finance Officer; and/or • Persons required to form part of the Chief Constable's Chief Officer Team. • Such other police staff roles as may be agreed between the

NOT PROTECTIVELY MARKED

		Commissioner and the Chief Constable from time to time as being 'chief officer equivalent' in nature.
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NOT PROTECTIVELY MARKED

Annex C**THE SEVEN PRINCIPLES OF PUBLIC LIFE**

SELFLESSNESS	Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
INTEGRITY	Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
OBJECTIVITY	In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
ACCOUNTABILITY	Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
OPENNESS	Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
HONESTY	Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
LEADERSHIP	Holders of public office should promote and support these principles by leadership and example.