



THE POLICE & CRIME COMMISSIONER FOR CLEVELAND

DECISION RECORD FORM

REQUEST:

To approve the scheme for Stage 2 transfer of staff as directed by the Home Secretary.

Title:

Statutory Staff Transfer and Working Arrangements

Executive Summary:

On the 27th March 2013 the Home Secretary directed Police and Crime Commissioners to submit for her consideration a scheme to transfer staff to the employment of the Chief Constable under the Police Reform and Social Responsibility Act 2011 by the 16th September. Approval in principle for the submitted scheme was received from the Home Secretary in a letter dated 6th December 2013. The definitive transfer scheme is required by 3 March 2014, which will be subject to final approval by the Home Secretary.

A single Corporate Governance Framework covering both legal entities has been developed taking into account the changes brought about by the transfer. It is based on current established good practice and takes into account national advice.

A separate Memorandum of Understanding sets out how specific areas of business are conducted between the two organisations.

The changes will come into effect on the 1st April 2014. A separate communications plan is being developed to ensure the implications are communicated to all staff prior to that date.

Decision:

- That the attached Transfer Scheme is approved
- That the attached Memorandum of Understanding is approved.

The Transfer Scheme and associated Corporate Governance Framework and Memorandum of Understanding meet with the requirements set out by the Home Secretary whilst offering the best solution for Cleveland. They will all come into effect on the 1st April 2014.

Implications:

Has consideration been taken of the following:	Yes	No
Financial	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Equality & Diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Human Rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sustainability	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Risk	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(If yes please provide further details below)

Decision Required – Supporting Information

Financial Implications: (Must include comments of the PCC's CFO where the decision has financial implications)

There is a statutory requirement on the PCC to undertake this transfer, the costs incurred have predominantly been in relation to that of the time of staff already employed and therefore these costs have been absorbed. The only additional costs, to date, that specifically relate to this transfer relate to system changes required to incorporate the separate payrolls for instance. These costs total £27k and will be incorporated within current budgets.

Legal Implications: (Must include comments of the Monitoring Officer where the decision has legal implication)

Regulations are set out in the Code of Corporate Governance and Scheme of Consent.

Equality and Diversity Implications

None arising in this report. The approach recommended in this paper meets constitutional requirements and has been approved by the Home Secretary.

Human Rights Implications

Human rights and equalities. All staff and their trade union representatives have been informed of the scheme and have had the opportunity to comment on them before the proposals were originally submitted. All parties are satisfied that the proposals are consistent with the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and that the principles of TUPE have been followed. It is proposed that staff will be offered the opportunity to transfer on terms that are, overall, no less favourable than had TUPE applied since no changes in terms and conditions or pension arrangements are proposed other than, in most cases, the change in employer from the Commissioner to the Chief Constable.

Sustainability Implications

None arising in this report.

Risk Management Implications

A separate risk register has been kept in relation to staff transfers. There are no significant risks outstanding, although if the attached Scheme and Corporate Governance Framework are not available by the 3rd March 2014 there would be significant risk of damage to reputation and loss of internal control.

OFFICER APPROVAL

Chief Executive

I have been consulted about the decision and confirm that financial, legal, and equalities advice has been taken into account. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner.

Signed: 

Date: 26.2.14

Cleveland Police 2nd Stage Staff Transfer Scheme 2014

Made 3rd March 2014

Coming into force 1st April 2014

The Police and Crime Commissioner for Cleveland, with the approval of the Secretary of State, makes the following Scheme in exercise of the powers conferred by Part 3 of Schedule 15 to the Police Reform and Social Responsibility Act 2011.

Citation and commencement

- (i) The Secretary of State may, under Part 3, Schedule 15 of the Police Reform and Social Responsibility Act 2011, direct a police and crime commissioner to make and submit a transfer scheme for approval.
- (ii) The Secretary of State on 27 March 2013 directed all police and crime commissioners to make and submit such transfer schemes for approval and to be effective from 1 April 2014.
- (iii) This scheme may be cited as the Cleveland Police Staff Transfer Scheme 2014 and shall come into force on 1 April 2014.

Interpretation

In this Scheme –

“the Chief Constable” means the Chief Constable of Cleveland Police.

“the Commissioner” means the Police and Crime Commissioner for Cleveland.

“the transferring date” means 1 April 2014.

“transferring employee” means a person –

- (a) who, immediately before the transfer date, is employed by the Commissioner; and
- (b) who is notified in writing on or before 31 December 2013 that the person is transferring to become an employee of the Chief Constable.

“transferring secondee” means a person –

- (a) who, immediately before the transfer date, is seconded to the Commissioner; and
- (b) who is notified in writing on or before 31 December 2013 that the person’s secondment is transferring to the Chief Constable.

Transfer of employment

The Commissioner now makes this Transfer Scheme under the Police Reform and Social Responsibility Act 2011 as follows:

1. On the commencement of this Scheme all employees of the Commissioner will, with the exception of those listed in the Schedule to this transfer scheme, transfer to and become employees of the Chief Constable of Cleveland Police.
2. All those persons listed in the Schedule to this transfer scheme shall remain in the employment of the Commissioner.

Schedule

1. By virtue of paragraph 1 of this transfer scheme, the staff occupying the roles listed below will not transfer from the employment of the Police and Crime Commissioner for Cleveland to become members of the civilian staff of the Chief Constable of Cleveland Police.

Office of the Police and Crime Commissioner for Cleveland

Chief of Staff
Police and Crime Commissioner's Chief Finance Officer
Support Officer (x2)
Governance Manager
Governance Officer (Victim and Volunteer Support)
Governance Officer (Consultation and Engagement)
Performance Manager
Performance Officer
Office Manager

Corporate Support

Planning and Development Officer
Strategic Contracts Manager
Contracts Support Officer
Treasury Manager (Job share)
Treasury Manager (Job share)
Treasury Assistant
Legal advisor (zero hour contract)
Legal advisor (zero hour contract)
Media advisor (zero hour contract)

Memorandum of Understanding between Police and Crime Commissioner for Cleveland and Chief Constable for Cleveland Police

1. Introduction

- 1.1. The Police and Crime Commissioner for Cleveland is responsible for the 'totality of policing', including setting strategic direction, and holding the Chief Constable to account for the delivery of effective and efficient policing. The Commissioner also has other responsibilities and obligations in respect of the wider criminal justice and community safety frameworks which are outside the scope of this Memorandum of Understanding (MOU).
- 1.2. The Chief Constable is responsible for the delivery of effective and efficient policing. She is responsible for ensuring that the Force is able to deliver its obligations under the Strategic Policing Requirement as well as the Commissioner's Police and Crime Plan. In matters of operational independence she is answerable to the law and her position is constitutionally established.
- 1.3. The parties agree to work in co-operation to ensure the effective and efficient delivery of policing services to people who live and work in and visit Cleveland.
- 1.4. Notwithstanding their distinct legal identities as corporations sole, 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.
- 1.5. 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.
- 1.6. 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:
 - 1.6.1. 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.
 - 1.6.2. In general post 1 April 2014, most support staff will be employed either by the Chief Constable directly, or via an outsourced contractual arrangement. It is expected that whilst these staff will mainly provide services to the Chief Constable, they will also provide similar support to the Commissioner. At the same time, the PCC will employ a small 'corporate support' team which will have responsibilities that are not transferred to the Chief Constable (eg. treasury management) and will operate corporately in support of both parties.
 - 1.6.3. Whilst 1.6.2 above describes the default position, it is accepted that there will be occasions when this will not be appropriate. It is most likely that this may occur in areas of legal, human relations and media advice. Where appropriate the Commissioner will contract externally on a case by case basis, but this should be the exception rather than the rule.

1.6.4. There is a 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.

1.6.5. wherever possible duplication of functions between the offices of the Commissioner and the Chief Constable must be avoided.

1.7. This MOU is a statement of intent which will underpin the partnership between the parties and provide clarity for employees.

1.8. 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.

1.9. In this MOU, the following expressions have the following meanings:

Chief Constable	The Chief Constable of Cleveland Police
Commissioner	The Police and Crime Commissioner for Cleveland
"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, services and financial information concerning the disclosing party's business and all disclosures, howsoever made to the other party, in connection with this MOU.
"Co-operative Arrangements"	Has the meaning set out in paragraph 6.5
"Date of Commencement"	1 st April 2014 (date when agreement starts)
"MOU"	This Memorandum of Understanding
"Scheme of Governance"	A document or set of documents setting out the terms on which the respective functions of the Commissioner and the Chief Constable will be exercised, identifying those functions and the manner in which they may be exercised by the parties' staff.
"senior officers"	Deputy and Assistant Chief Constables, Chief of Staff and Chief Finance Officers of both the Commissioner and the Chief Constable
"Services"	The support provided by the parties to the MOU

1.10. In this MOU words expressed in any gender shall where the context so requires or permits include any other gender and words expressed in the singular shall where the context so requires or permits include 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. This agreement is made between each corporation sole and is intended to bind their successors. Nothing in this MOU shall create or be deemed to create a partnership or agency, franchise or employment relationship between the parties.
- 2.2. No fee is payable from one party to another in respect of any services provided within the scope of this MOU.
- 2.3. The MOU will automatically lapse if either party withdraws from participation in the Scheme of Governance.

3. Roles and responsibilities

- 3.1. The parties have a need for support in order to exercise their powers and fulfil their respective duties as set out below.
- 3.2. Wherever possible, the Commissioner and the Chief Constable will adopt a single policy in these business areas to facilitate the effective and efficient administration and application of those policies by staff.

Communications and Engagement

- 3.3. The Commissioner has a statutory duty to publish specified information and a power to provide (whether by publication or other means) information about the exercise of his/her functions and those of the Chief Constable¹, and duties to produce an annual report² and to make arrangements for obtaining the views of the community on policing including arrangements for obtaining the views of the people in the police area on any proposed police and crime plan and on his/her proposals for expenditure³.
- 3.4. The Commissioner also has the duty, in carrying out any of his/her functions, to have regard to the views of people in the police area about policing in that area⁴.
- 3.5. The Chief Constable also has a duty to make arrangements for obtaining the views of persons within each neighbourhood in the police area about crime and disorder in that neighbourhood and to provide such persons with information about policing in that neighbourhood including the holding of meetings between persons within such neighbourhoods and police officers with responsibility for supervising or carrying out policing in that neighbourhood⁵.
- 3.6. The Chief Constable also has a power at common law to publish and request any information to or from the general public where to do so would assist in the prevention or detection of crime or the maintenance of law and order.
- 3.7. It is acknowledged that:

¹ S.11 Police Reform and Social Responsibility Act 2011

² S.12 Police Reform and Social Responsibility Act 2011

³ S.96 Police Act 1996 (as amended)

⁴ S.17 Police Reform and Social Responsibility Act 2011

⁵ S.34 Police Reform and Social Responsibility Act 2011

- (a) The Commissioner will publish and gather information, views and opinions in respect of crime and disorder in the police area and speak on behalf of the people in the police area regarding policing and crime;
 - (b) The Chief Constable will publish and gather information, views and opinions in respect of crime and disorder and speak on behalf of the Force in connection with the prevention and detection of crime and the maintenance of law and order;
 - (c) The Commissioner and the Chief Constable may wish to express different messages on the same issue. There may be issues where it would be more appropriate for only one of the parties to speak publicly about an issue, regardless of the media request.
- 3.8. The Commissioner and the Chief Constable will seek to agree a joint communications strategy (or two compatible strategies) in respect of all issues on which they might anticipate that they will wish to publish or gather information, views and opinions.

Human Resources Services, including Learning and Development

- 3.9. The Commissioner has a statutory duty to appoint a chief constable, chief executive and chief finance officer. He also needs to appoint such other staff required to exercise the Commissioner's functions⁶. The Commissioner has all the duties and responsibilities in law of an employer in relation to all persons employed by him.
- 3.10. The Chief Constable has a corresponding duty to appoint a chief finance officer, and such other staff as she thinks appropriate to exercise the chief constable's functions or otherwise assist the police force⁷. She also has the responsibility for appointing and managing all officers below the rank of chief constable⁸. The Chief Constable has all the duties and responsibilities in law of an employer in relation to all police officers under her direction and control and any civilian staff employed by her.
- 3.11. Policies relating to employment will be agreed jointly by the Commissioner and the Chief Constable, and apply to staff of both the Commissioner and the Chief Constable for ease and efficiency of administration.

Professional Standards

- 3.12. The Chief Constable is responsible for maintaining standards of conduct and performance of police officers and civilian staff serving the police force, and managing all complaints against the force, its officers and staff.
- 3.13. The Commissioner is responsible for maintaining standards of conduct and performance of his staff, and has a duty to monitor all complaints made against police officers and staff.
- 3.14. Both have a duty to ensure that they are kept informed regarding standards of conduct and performance, and a duty to provide the IPCC with such assistance as the IPCC may reasonably require for the purposes of any investigation⁹.

⁶ Paragraph 6 Sch1 Police Reform and Social Responsibility Act 2011

⁷ Paragraph 4 Schedule 2 Police Reform and Social Responsibility Act 2011

⁸ S.39, 40 Police Reform and Social Responsibility Act 2011, inter alia

⁹ S.15 Police Reform Act 2002 as amended

Finance

- 3.15. The Commissioner is responsible for holding the police fund¹⁰ and for receiving and managing grants, gifts and loans¹¹. The Chief Constable has a duty to secure good value for money in the exercise of her functions¹². The Commissioner and Chief Constable have a shared responsibility to provide effective management of the policing budget and to secure value for money on behalf of the public they both serve¹³. These duties and responsibilities are set out in the Financial Regulations. .

Information Assurance

- 3.16. Both the Commissioner and the Chief Constable are data controllers and processors and have duties under the Data Protection Act 1998 and Freedom of Information Act 2000.

Supplies and Services

- 3.17. The Chief Constable has a duty to ensure that the supplies and services (including transport assets) procured for the use of the Force meet its operational needs.
- 3.18. The Commissioner is responsible for ensuring that the supplies and services (including transport assets) procured for the use of the Force and his own office are effective and efficient and meets the business needs of the police force and his office¹⁴.
- 3.19. The Commissioner is responsible for ensuring that the policing estate balances operational and business needs with responsible environmental management and sustainable development¹⁵.

Information Technology

- 3.20. The Chief Constable has a requirement to ensure that information technology services procured for the use of the Force meet its operational needs.
- 3.21. The Commissioner is responsible for ensuring that information technology services procured for the use of the Force and his own office are effective and efficient and meets the business needs of the police force and his office¹⁶.

Risk, Change Services, Performance and Research

- 3.22. Both the Commissioner and the Chief Constable need to be able to assess and manage risk, plan and manage change, assess organisational performance and undertake research.

Legal Services

¹⁰ S.21 Police Reform and Social Responsibility Act 2011

¹¹ S.46 to 48, 92 to 94 Police Act 1996 as amended

¹² S.35 Police Reform and Social Responsibility Act 2011

¹³ Paragraph 39 of the Schedule, Policing MOU Order 2011

¹⁴ S.1(6) Police Reform and Social Responsibility Act 2011

¹⁵ Paragraph 14 Schedule 1 Police Reform and Social Responsibility Act 2011

¹⁶ S.1(6) Police Reform and Social Responsibility Act 2011

- 3.23. Both the Commissioner and the Chief Constable need reliable and timely legal advice and representation in order to perform and exercise their respective functions and powers.

4. Sharing of Information

- 4.1. 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 endeavour to ensure compliance with Data Protection legislation through proper application of the governance arrangements contemplated in this MOU.
- 4.2. For the purposes of the Data Protection Act 1998 the Commissioner and the Chief Constable remain the data controller for any personal data recorded under their respective control.
- 4.3. 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 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
- 4.4. 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:
- 4.4.1. 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;
 - 4.4.2. the confidential information rightfully becomes available to the other party from sources not bound by obligations of confidentiality
 - 4.4.3. the confidential information was available to the other party on a non-confidential basis prior to its disclosure to such party;
 - 4.4.4. the other party is required by compulsion of law to disclose
- 4.5. The parties agree that all discussions and negotiations in relation to the provision of services under this MOU 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.
- 4.6. The disclosure of confidential information is a matter for discussion between the Commissioner and Chief Constable.
- 4.7. Any limitation or waiver of the right of confidentiality contemplated in the provisions 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.

- 4.8. 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 the provisions of that Act.

5. Access to premises and personnel

- 5.1. The Commissioner and Chief Constable and their senior officers shall each have unlimited 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. Governance

- 6.1. The Chief Constable will at all times retain direction and control over the staff within her employment.
- 6.2. The Commissioner's Chief of Staff will at all times retain managerial authority and operational control in respect of the staff within the Commissioner's employment.
- 6.3. Subject to the provisions contained in 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.
- 6.4. This MOU provides for three circumstances in which business support may be sought from the other party. These are as follows:
 - 6.4.1. The Commissioner wishes to seek support from the Chief Constable's staff.
 - 6.4.2. The Chief Constable wishes to seek support from the Commissioner's staff.
 - 6.4.3. 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.
- 6.5. These proposed arrangements collectively are known as cooperative arrangements.
- 6.6. Either of the parties may assign work to staff subject to a cooperative arrangement and use the existing resources within that team.
- 6.7. 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 amended formally drawn to the attention of both parties before implementation.
- 6.8. 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.

- 6.9. 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.
- 6.10. Whilst it is contemplated that whenever the Commissioner or the Chief Constable wishes to have work undertaken which could be provided by way of cooperative arrangements then such work will be so requested, it is acknowledged that circumstances may arise in which either the Commissioner or the Chief Constable may wish to commission such work from another source and nothing in this MOU shall be deemed to prevent or inhibit such course of action.
- 6.11. 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.
- 6.12. 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.
- 6.13. 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 such alterations the Commissioner or the Chief Constable will consult the other.
- 6.14. 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.

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 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 the identity of either of the corporations sole.
- 7.4. 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 received on the same day.
- 7.5. No variation to this MOU shall be effective unless recorded in writing signed by each of the parties or their duly authorised representatives.

Signed by, for and on behalf of the Police and Crime Commissioner for Cleveland

Name *Andy Cooper*
Position *Police & Crime Commissioner*

Signature *[Signature]*
Date *25/2/2014*

Signed by, for and on behalf of the Chief Constable of Cleveland Police

Name *Jacqui Cheer*
Position *Chief Constable*

Signature *[Signature]*
Date *28/2 2014*