



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CHIEF CONSTABLE OF BEDFORDSHIRE POLICE

AND

THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

Version Number	Date	Organisation/Author/Contributor
One	19 October 2021	

1. INTRODUCTION

- 1.1 The Police Ombudsman for Northern Ireland (the Police Ombudsman) was established under the Police (Northern Ireland) Act 1998 (the 1998 Act) to investigate complaints about the conduct of police officers. Where appropriate the Police Ombudsman makes recommendations in respect of criminal and misconduct matters where they concern members of the Police Service of Northern Ireland (PSNI) or relevant members of assisting police forces exercising constabulary powers in Northern Ireland as a result of mutual aid agreements¹. In order to come within the oversight of the Police Ombudsman the assisting police force must enter into a formal agreement with the Police Ombudsman².
- 1.2 The Chief Constable of Bedfordshire Police has entered into a mutual aid agreement with the Chief Constable of the PSNI for the purposes of investigating a number of significant legacy matters. The Chief Constable of Bedfordshire Police has also entered into a statutory agreement with the Police Ombudsman³.
- 1.3 The Police Ombudsman and the Chief Constable of Bedfordshire Police, who has appointed Mr Jon Boucher as a member of Bedfordshire Police and 'officer in overall command' of the matters being investigated on behalf of the PSNI, recognise that they are undertaking investigations in parallel to, and on occasions in conjunction with, each other:
- (i) Operation Abundance (the Police Ombudsman) / Operation Kenova (Bedfordshire Police)
 - (ii) Operation Newham (the Police Ombudsman) / Operation Denton (Bedfordshire Police)
 - (iii) Operation Fairport (the Police Ombudsman) / Operation Turma (Bedfordshire Police)
 - (iv) Operation Camino (the Police Ombudsman) / Operation Mizzenmast (Bedfordshire Police)

The terms of reference for these investigations are attached at Appendix A.

- 1.4 In order to comply with the obligations on the respective parties to undertake their investigations in an effective manner, including their independence, from time to time it is necessary to share information. This Memorandum of Understanding (MoU) sets out the agreed working practices and protocols between the Police Ombudsman and the Chief Constable of Bedfordshire Constabulary for the sharing of such information.

2. A FRAMEWORK FOR INFORMATION SHARING

- 2.1 The Chief Constable of the PSNI has a statutory obligation to *'supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions'*⁴.
- 2.2 The Police Ombudsman has a statutory duty to exercise her statutory powers in such a manner and to such an extent as to secure the confidence of the public and of members of the police service in the complaints system⁵.

¹ S.98 of the Police Act 1996

² S. 60 of the Police (Northern Ireland) Act 1998

³ S.60 Agreement between the Police Ombudsman and Chief Constable of Bedfordshire Police

⁴ s.66(1) Police (Northern Ireland) Act 2000

⁵ s.51(4) Police (Northern Ireland) Act 1998

- 2.3 Both the Police Ombudsman and Bedfordshire Police are controllers within the meaning of the Data Protection Act 2018 (DPA 2018) in relation to the processing of personal information (including sensitive personal information) for law enforcement purposes. For the purpose of DPA 2018, the parties are satisfied that the data sharing arrangements outlined in this document meet the requirements of the Information Commissioner's statutory Code of Practice on Data Sharing.
- 2.4 The Police Ombudsman and Bedfordshire Police confirm that they both have in place policies which comply with section 42 of DPA 2018 in respect of sensitive processing. The parties further confirm that all processing of data carried out by them in connection with this MoU will be done in accordance with their respective policies.
- 2.5 The Police Ombudsman and Bedfordshire Police confirm that they both have in place policies outlining their deployment of technical and procedural controls in order to protect personal data and sensitive processing for law enforcement purposes, and that such policies comply with DPA 2018, ICO Guidance and Codes of Practice. The parties further confirm that all processing of data carried out by them in connection with this MoU will be done in accordance with their respective policies.
- 2.6 Should either party process data received in connection with this MoU in a manner which does not comply with their section 42, DPA 2018 compliant policy, their data security policy or any other provision of DPA 2018, that party will bear sole responsibility for such action and will fully indemnify the other party for any loss or action taken as a result of such a breach.
- 2.7 The Police (Northern Ireland) Act 1998 places restrictions on the disclosure of information by the Police Ombudsman or her staff⁶. There are, however, exemptions including; *'in connection with the exercise of any function of the Ombudsman, for the purposes of any criminal, civil or disciplinary proceedings and in the form of a summary or other general statement made by the Ombudsman'*.
- 2.8 The Anti-Terrorism, Crime and Security Act 2001 extended the aforesaid disclosure powers as a result of which the Police Ombudsman may now disclose information to, or receive information from, a public authority (including Bedfordshire Police); *'for the purposes of any criminal investigation, for the purposes of any criminal proceedings, the purposes of the initiation or bringing to an end of any such investigation or proceedings and the purposes of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end'*. The disclosure must be *'proportionate to what is sought to be achieved'*.⁷
- 2.9 This document provides an agreed framework that enables both the Police Ombudsman and Mr Boutcher on behalf of Bedfordshire Police, to comply with relevant obligations imposed by but not limited to:
- Police (Northern Ireland) Act 1998
 - and in particular sections 51(4) and 63
 - Police (Northern Ireland) Act 2000
 - and in particular sections 32 and 66
 - RUC (Complaints etc) Regulations 2000
 - and in particular Regulation 8

⁶ s.63(1) Police (Northern Ireland) Act 1998

⁷ s.17(2) Anti-terrorism, Crime and Security Act 2001

- Regulation of Investigatory Powers Act 2000 (RIPA)
- Anti-Terrorism, Crime and Security Act 2001
- Public Records (Northern Ireland) 1923
- Official Secrets Act 1989
- Human Rights Act 1998 (HRA)
- Criminal Procedures and Investigations Act 1996 (CPIA)
- Freedom of Information Act 2000 (FOIA)
- Data Protection Act 2018 (DPA 2018) and related Codes of Practice
- HMG Security Policy Framework

2.10 This MoU has been written to reflect the respective obligations of the parties under the legislation. Nothing in this MoU will replace the legal obligations placed on both the Police Ombudsman and Bedfordshire Police by virtue of legislation. In this respect, there is agreement that the Police Ombudsman will at all times be the authority for investigative decision making which touches on the conduct of former or serving police officers.

3. INFORMATION REQUESTS

3.1 The Police Ombudsman and Mr Boutcher on behalf of the Chief Constable of Bedfordshire Police recognise they hold information originating from a number of sources which may be of interest to the other party's defined investigations:

- Material originating from the PSNI.
- Material originating from the Ministry of Defence.
- Material originating from the Security Service.
- Material generated by the Police Ombudsman's or Mr Boutcher's investigations such as witness statements or analytical products.
- Material originating from other sources.

3.2 Subject to relevance and proportionality tests, it is agreed that where the Police Ombudsman or Mr Boutcher identify material originating from other agencies which may assist one of the defined investigations of the other party, the existence of such material will be revealed. It will then be for the other party to request disclosure from the originating agency in accordance with existing agreements.

3.3 It is further agreed that where the Police Ombudsman or Mr Boutcher identify material which has been generated by their own investigations which may assist the corresponding investigation of the other party, the existence of the material will be revealed and arrangements made for disclosure to the other party.

3.4 The parties to this MoU agree that these disclosure arrangements are delegated to Single Points of Contact (SPOC), supported by Deputy SPOCs for individual investigations, who will act as conduits for the exchange of information.

3.5 The SPOC for Bedfordshire Police will be Mr Keith Surtees. The Police Ombudsman's SPOC will be Senior Director of Investigations Mr Paul Holmes.

3.6 All requests for information from the Police Ombudsman's investigations to Mr Boutcher's investigations (and vice versa) will be conveyed through the appointed SPOCs or their Deputies.

3.7 Requests for information may be passed in person, or, for administrative purposes only, by email.

4. PROVISION, HANDLING AND STORAGE OF SENSITIVE MATERIAL (Operation Abundance/Kenova)

4.1 Due to the inseparable relationship between a number of matters being investigated by Operation Abundance and Operation Kenova, special arrangements have been agreed for accessing sensitive information. Recognising that these provisions sit outside 'MOUs' currently in place with the PSNI, the MOD and the Security Service (MI5), it is nevertheless agreed that appropriate staff nominated by Operation Abundance (Confidential Unit & Deputy SPOC) or Operation Kenova will be facilitated with 'read only' access to relevant sensitive material held by the other party. This will be for the purposes of assessing the information only. Any requests for disclosure will be made to the agency from which the material originated.

4.2 The Police Ombudsman and Mr Boutcher on behalf of the Chief Constable of Bedfordshire agree that all staff who will require access to sensitive material marked as 'SECRET' or above and/or STRAP marked will be cleared to the level of 'Develop Vetting' and STRAP accredited. All other members of Operation Kenova and Operation Abundance will be cleared to at least the level of Management Vetted and Security Cleared.

4.3 Access to relevant sensitive material will be at either Mr Boutcher's main London offices and/or satellite office in Northern Ireland or the Police Ombudsman's Confidential Unit.

4.4 Where either party requests access to any sensitive information that is not held by the other party, it will default to its own working practices and agreements with other agencies in order to obtain the material.

4.5 All sensitive material will be handled, stored and moved in accordance with the applicable security requirements, as outlined within the Government Protective Marking System (GPMS), the STRAP Security Manual (SSM) and the Data Protection Principles under Part 3 of DPA 2018. The recording, storage and movement of any such material will be strictly governed and documented in accordance with security arrangements agreed between the respective SPOCs.

5. USE OF MATERIAL

5.1 Where investigation material has passed the relevancy and proportionality tests and been authorised for disclosure by SPOCs or their deputies, the respective investigations may copy and create further documents referencing and relying upon the original material, thereby creating 'secondary material'. This will include recordings of interviews. All secondary material will be given the appropriate protective marking and will be handled, stored and moved in accordance with the GPMS and SSM.

5.2 Secondary material may be disclosed to the Director of Public Prosecutions, Public Prosecution Service (Northern Ireland) (PPSNI) and/or their delegated representative and, upon notification and agreement, the Chief Constable of the Police Service of Northern Ireland (PSNI) and/or their delegated representative. Any disclosure will only be for the purposes of the defined investigations and to enable those bodies to discharge their respective functions in that regard. Disclosure will only be made following the provision of assurances that the disclosed material will be handled, stored

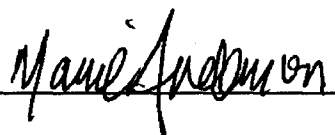
and moved in accordance with the applicable security requirements in accordance with the GPMS, SSM and the Data Protection Principles under Part 3 of DPA 2018. No material will be disclosed to any other persons or agency without the prior written consent of the Police Ombudsman and Mr Boutcher on behalf of the Chief Constable of Bedfordshire Police respectively.

- 5.3 When material has been disclosed by one party to another under this MoU, the recipient will bear full responsibility for such material upon that party's safe receipt of same. When a party has created secondary material as defined under this MoU, that party will bear full responsibility for such material.
- 5.4 The recipient of material or creator of secondary material will bear responsibility for any operational compliance failure, unintended disclosure or any breach whatsoever of DPA 2018 in respect of such material. The recipient of material or creator of secondary material will fully indemnify the other party against any claims or action taken by a data subject or by third parties as a result of such a breach.
- 5.5 Where matters are subject of joint investigation, SPOCs and their deputies will work in conjunction in compilation of files and reports for the purposes of prosecutorial advice or direction from the PPS and to ensure all CPIA disclosure obligations are met.

6. RETURN AND DESTRUCTION OF MATERIAL

- 6.1 Investigations undertaken by the Police Ombudsman and Mr Boutcher on behalf of the Chief Constable of Bedfordshire may continue to hold material originating from the other party in accordance with the organisations' policies for evidential retention/destruction, subject to GPMS and SSM and the Data Protection Principles under Part 3 of DPA 2018.

Signed:

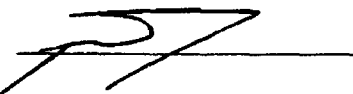


Marie Anderson
Police Ombudsman for Northern Ireland

Date:

19/10/2021

Signed:



Jon Boutcher
Officer in Overall Command, Operation Kenova

Date:

12/10/2021