

Memorandum of Understanding between the Information Commissioner and the Police Ombudsman for Northern Ireland

Introduction

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the Information Commissioner ("**the Commissioner**") and the Police Ombudsman for Northern Ireland ("**the Police Ombudsman**"), collectively referred to as "**the parties**" throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties, including the exchange of appropriate information, so as to assist them in discharging their regulatory functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the Police Ombudsman. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

The role and function of the Information Commissioner

3. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
4. The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation:
 - Data Protection Act 2018 (DPA);
 - UK General Data Protection Regulation (UK GDPR);
 - Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR);

- Freedom of Information Act 2000 (FOIA);
 - Environmental Information Regulations 2004 (EIR);
 - Environmental Protection Public Sector Information Regulations 2009 (INSPIRE Regulations);
 - Investigatory Powers Act 2016;
 - Re-use of Public Sector Information Regulations 2015;
 - Enterprise Act 2002;
 - Security of Network and Information Systems Directive (NIS Directive); and
 - Electronic Identification, Authentication and Trust Services Regulation (eIDAS).
5. Article 57 of the UK GDPR and Section 115(2)(a) of the DPA 2018 place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the UK GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes outlined in paragraph 4 above.
6. The Commissioner's regulatory and enforcement powers include:
- conducting assessments of compliance with the DPA, UK GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
 - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA;

- administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
 - issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
 - certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
 - prosecuting criminal offences before the Courts.
7. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

Functions and powers of the Police Ombudsman

8. The Police Ombudsman was established under Part VII of the Police (Northern Ireland) 1998 (the 1998 Act). The Police Ombudsman must exercise her powers so as to secure an efficient, effective and independent police complaints system, and to do so in the way she thinks best calculated to secure the confidence of the public and of the police in that system (section 51(4) of the 1998 Act).

The Police Ombudsman has jurisdiction in respect of complaints about the following organisations when operating in Northern Ireland:-

- The Police Service of Northern Ireland including designated civilians
- The Belfast Harbour Police
- The Belfast International Airport Police
- The Ministry of Defence Police
- The National Crime Agency

In addition, the Police Ombudsman has jurisdiction to investigate serious¹ complaints about:

- Mutual Aid police officers from Great Britain
- Certain Home Office employees (Immigration officers, designated customs officials and custom revenue officials).

The Police (Northern Ireland) Act 1998 places restrictions on the disclosure of information by the Police Ombudsman or her staff. 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'*.

The Anti-Terrorism, Crime and Security Act 2001 (2001 Act) 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 ICO); *'for 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'.

A Purpose of information sharing

9. The purpose of the MoU is to enable the parties to share relevant information which enhances their ability to exercise their respective functions.
10. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the GDPR and the DPA 2018. The MoU sets out the potential legal framework for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

¹ serious complaints are defined in section 60Zb of the 1998 Act.

Principles of cooperation and sharing

11. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and in particular section 63 of the 1998 Act, as she becomes aware and considers appropriate, the Police Ombudsman will alert the Commissioner to any potential [and significant] breaches of the legislation regulated by the Commissioner discovered whilst undertaking functions and duties, and provide relevant and necessary supporting information.
12. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at his discretion, as he becomes aware and considers appropriate, the Commissioner will alert the Police Ombudsman to any potential [and significant] breaches of the legislation which he regulates and are discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information.
13. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the parties will:
 - Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
 - Consult one another on any issues which might have significant implications for the other organisation.
14. The parties will comply with the general laws they are subject to, including, but not limited to, local data protection laws; the maintenance of any prescribed documentation and policies; and comply with any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.

Lawful basis for sharing information

Information shared by the Police Ombudsman with the Commissioner

15. The Commissioner's statutory function relates to the legislation set out at paragraph 4, and this MoU governs information shared by the Police Ombudsman to assist the Commissioner to meet those responsibilities.

To the extent that any such shared information comprises personal data, as defined under the UK GDPR and DPA 2018, the Police Ombudsman is a Controller so must ensure that she has a lawful basis to share it and that doing so would otherwise be compliant with data protection law. The Police Ombudsman must also ensure that sharing the information in question is consistent with her legal powers.

16. In addition to section 17 of the 2001 Act, section 131 of the Data Protection Act 2018 may provide both the lawful basis, from a data protection perspective, and the legal power for the Police Ombudsman to share information with the Commissioner. Under this particular provision, the Police Ombudsman is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is *"information necessary for the discharge of the Commissioner's functions"*.

Information shared by the Commissioner with the Police Ombudsman

17. The Commissioner, during the course of his activities, will receive information from a range of sources, including personal data. He will process all personal data in accordance with the UK GDPR, the DPA 2018 and all other applicable legislation. The Commissioner may identify that information he holds, which may include personal data, which ought to be shared with the Police Ombudsman as it would assist her in performing her functions and responsibilities.
18. Section 132(1) of the DPA 2018 states that the Commissioner can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if it has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, discharging his functions and it relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Section 132(2) of the DPA 2018 sets out the circumstances in which the Commissioner will have the lawful authority to share that information with the Police Ombudsman. In particular, it will be lawful in circumstances where:
 - The sharing was necessary for the purpose of the Commissioner discharging his functions (section 132(2)(c));

- The sharing was made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
 - The sharing was necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 132(2)(f)).
19. The Commissioner will therefore be permitted to share information with the Police Ombudsman in circumstances where he has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 18. In doing so, the Commissioner will identify the function of the Police Ombudsman with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the Police Ombudsman is personal data the Commissioner will consider whether it is necessary to provide it in an identifiable form in order for the Office to perform all statutory functions, or whether disclosing it in an anonymised form would suffice.
20. If information to be disclosed by the Commissioner was received by him in the course of discharging his functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.
21. Where information is to be disclosed by either party for law enforcement purposes under section 35 (4) or (5) of the DPA 2018 then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA.
22. Where a request for information is received by either party under data protection laws, FOIA or EIR, and where the information being sought under that request includes information obtained from, or shared by, the other party, the recipient of the request will seek the views of the other party. In particular, the receiving party will have regard to the FOIA section 45 Code of Practice and/or the EIR Regulation 16 Code of Practice, as appropriate. However the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request, either as Controller in respect of that data or the public authority that holds the information

under FOIA or EIR (depending on the nature of the information being sought).

Method of exchange

23. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Confidentiality and data breach reporting

24. Where confidential material is shared between the parties it will be marked with the appropriate security classification.
25. Where one party has received information from the other, it will consult with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case.
26. Where confidential material obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party without delay. This is in addition to obligations to report a personal data breach under the GDPR and/or DPA where personal data is contained in the information disclosed.

Investigation and enforcement

27. The parties recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate party or parties will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in these investigations, the parties will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the parties will discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.

28. The parties may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
29. Where the parties agree that an investigation should be carried out by both regulators, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the others.
30. Where either party carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
31. If a decision is made by either party to take action against a subject, the Police Ombudsman and the Commissioner should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both parties publish the outcome of their investigations simultaneously. In any event, the Police Ombudsman and the Commissioner will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours (including a working day) prior to publication unless there are overriding reasons which prevent or delay such notice.
32. Relevant staff of the Police Ombudsman and the Commissioner staff, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

Duration and review of the MoU

33. The parties will monitor the operation of this MoU and will review it no later than two years from the date of signing the agreement, and thereafter every two years.

- 34. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties.
- 35. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

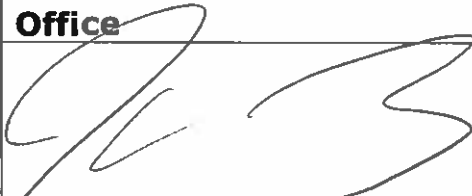
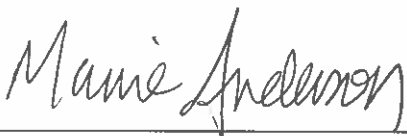
Key contacts

- 36. The parties have both identified a key person who is responsible for managing this MoU, these are set out below :

Information Commissioner's Office	Commissioner's	Police Ombudsman's Office
Steve Eckersley - Director of Investigations Email: stephen.eckersley@ico.org.uk Telephone: 0330 414 6717		Susan Harper – Director of Current Investigations Email: susan.harper@policeombudsman.org Telephone: 02890828741
Address: Wycliffe House, Water Lane, Wilmslow, SK9 5AF		Address: New Cathedral Buildings 11 Church Street Belfast BT1 1PG

- 37. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Signatories

Name and role:	Name and role:
Information Commissioner's Office	Police Ombudsman's Office
	
Date: 10/03/22	Date: 10 March 2022

Version control (to be removed on publication)

Version	Date	Author	Change Description
6	25 November	MA	Addition re section 17 2001 Act and changes from him to her