

A Memorandum of Understanding on the Prevention, Investigation Enforcement, and Prosecution of Heritage Crime between

English Heritage

Crown Prosecution Service

The Association of Chief Police Officers of England, Wales and Northern
Ireland and

Participating local authorities



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1. Purpose

This Memorandum of Understanding (MoU) is intended to serve as a general guide to fostering co-operation between the respective parties and to allow the necessary flexibility in activities that are undertaken between them in relation to heritage crime. It defines the roles and responsibilities of the parties in the prevention, investigation, enforcement and prosecution of heritage crime, in keeping with their respective aims. There will be an annual strategic assessment for heritage crime which will inform an action plan for the parties to this MoU to follow.

It should be used as a basis for high level strategic engagement and regional protocols between English Heritage, participating local authorities, Police forces and the Crown Prosecution Service.

Such protocols will form the basis of working arrangements with those involved at regional and force level.

Heritage crime is defined for the purposes of this MoU as *'any offence which harms the value of England's heritage assets and their settings to this and future generations'*

England's heritage assets include:

- Listed buildings;
- Conservation areas;
- Scheduled monuments;
- Protected marine wreck sites;
- World Heritage Sites;
- Registered Parks and Gardens;
- Battlefields;
- Protected military remains of aircraft and vessels of historic interest; and
- Undesignated but acknowledged heritage buildings and sites.

2. Parties to the agreement

English Heritage (EH)

Association of Chief Police Officers of England Wales and Northern Ireland (ACPO)

Crown Prosecution Service (CPS); and

Participating local authorities (LAs) - see *Appendix 1*.

3. Statutory roles and responsibilities of parties

English Heritage

English Heritage is a non-departmental public body with responsibility for all aspects of protecting and promoting the historic environment in England.

English Heritage is the Government's statutory adviser on the historic environment.

Association of Chief Police Officers of England, Wales and Northern Ireland

The Association of Chief Police Officers (ACPO) is an independent, professionally led strategic body. In the public interest and, in equal and active partnership with Government and the Association of Police Authorities, ACPO leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland. In times of national need ACPO - on behalf of all chief officers - coordinates the strategic policing response.

Chief Officers of all police forces strive to deliver effective policing at local, regional and national levels. ACPO is a voluntary association of chief officers bringing together their experience and expertise to help achieve those aims on behalf of the public. ACPO is wholly accountable to chief officers who in turn, are each accountable to the people they serve and to police authorities at a force level.

The Police have a duty to preserve life, protect property and to prevent and detect crime.

They have a role in preventing and investigating criminal offences involving heritage and the historic environment and are the lead agency for the investigation of those criminal offences identified in section 6 below.

Crown Prosecution Service

The Crown Prosecution Services (CPS) is the principal public prosecuting authority for England and Wales. Although the CPS works closely with the police, it is independent of them. The independence of prosecutors is of fundamental constitutional importance. Casework decisions are taken with fairness, impartiality and integrity, delivering justice for victims, witnesses, defendants and the public.

It is the duty of prosecutors to review, advise on and to prosecute cases, or to offer an appropriate out-of-court-disposal to the offender. Prosecutors must ensure that the law is properly applied; and all relevant evidence is put before the court; and that obligations of disclosure are complied with, in accordance with the Code for Crown Prosecutors. The role of the CPS is to prosecute cases firmly, fairly and effectively when there is sufficient evidence to provide a realistic prospect of conviction and when it is in the public interest to do so.

Participating Local Authorities

Participating Local Authorities (LAs) are those authorities who have agreed to be a party to this MoU and are named in *Appendix 1*.

Local authorities are independently elected and autonomous bodies. They are largely independent of central government and are directly accountable to their electorates. Their powers are conferred on them by Acts of Parliament. Some powers are given to all local authorities and some only to specific types. Local authorities play a vital role in representing the interests of their citizens and commissioning local services.

Their responsibilities vary depending on the type of authority but includes for example planning, education, waste management, housing, community safety and crime reduction etc.

Under the Town and Country Planning Act 1990 and the Planning and Compensation Act 1991 District Councils, County Councils, Unitary Councils, Metropolitan District Councils and London Borough Councils and in National Parks the National Park authority, are designated as local planning authorities.

Local planning authorities have a duty to prepare development plans for their area, such plans should take account of the historic environment. They control development through the granting and refusal of planning applications and are also responsible for determining applications for listed building consent and conservation area consent in their area. They have the power to enforce against unauthorised development (breaches of planning control), the unauthorised demolition or alteration of listed buildings and the unauthorised demolition of unlisted buildings in conservation areas. They also have the power to enforce conditions attached to planning permissions, listed building and conservation area consents.

Under the Crime and Disorder Act 1998 responsible authorities have a statutory duty to work with other local agencies and organisations to develop and implement strategies to tackle crime and disorder including anti social behaviour that adversely affects the local environment within their local government area. Such a strategy should include the historic environment and associated heritage assets within that defined area.

A local government area in England for this purpose is a district or London Borough (this includes a unitary authority), the City of London, the Isle of Wight and the Isles of Scilly. The responsible authority is the Council for that area and, where it is a district (and not a unitary authority), the Council for the County that includes the district.

4. Investigations

The investigatory parties to this MoU are committed to ensuring that any investigation into heritage crime is proportionate but effective, and the parties agree to work closely together in order to achieve this.

Decisions as to who will lead the investigation, and the direction it will take, should be timely, informed by the best available evidence and technical expertise, and should take account of this MoU and the wider public interest. Should there be any issue as to who is to be involved in investigating heritage crime then the parties will work together to reach a conclusion.

The investigatory parties to this MoU will assist each other, where practicable and wherever resources and powers allow, in the prevention, investigation, enforcement and prosecution of heritage crime.

5. Legal action

The decision whether to commence criminal proceedings (or where charges have been brought by the police to continue those proceedings) rests with the appropriate prosecuting body which will depend upon the heritage asset type and the offences involved in any given case.

Nonetheless, enforcement action taken by one organisation does not preclude another taking action if considered appropriate. All parties to this MOU who contribute to or have a legitimate interest in an investigation will be consulted on the handling and disposal.

The respective roles and responsibilities of the parties to this MoU to prevent, investigate, prosecute, assist or advise in respect of crimes involving heritage assets are set out below in paragraph 6.

It is agreed by the parties to this MoU that LAs should have the duties and responsibilities set out below in respect of the prevention, investigation and enforcement of heritage crimes. It is, however, only those participating LAs who are signatories to this MoU (see *Appendix 1*) that have agreed to its terms.

6. Roles and responsibilities to prevent, investigate, prosecute, assist and advise on heritage crime

Listed Buildings

Participating LAs as part of their function as local planning authority have a duty to prevent, investigate and where appropriate prosecute unauthorised works or deliberate damage (where this is caused by the owner or occupier) to listed buildings, breaches of conditions attached to listed building consent and breaches of listed building enforcement notices. These specific regulatory crimes are set out in summary in *Appendix 2*.

The police and EH will provide assistance and advice in campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any such crimes.

The police are responsible for prevention and investigation of crimes involving harm to listed buildings, such as theft and criminal damage. The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area and EH have a duty to assist and advise in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

Conservation Areas

Participating LAs as part of their function as local planning authority have a duty to prevent, investigate and prosecute unauthorised demolitions within conservation areas, any breaches of conditions of conservation area consent and conservation area enforcement notices. These specific regulatory crimes are set out in summary in *Appendix 2*.

The Police and EH will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any such crimes.

The police are responsible for prevention and investigation of crimes involving harm to conservation areas, such as theft, criminal damage and offences involving anti-social behaviour. The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area and EH have a duty to assist and advise in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

Scheduled Monuments

EH has a duty to prevent, investigate and prosecute unauthorised works to scheduled monuments (works without scheduled monument consent).

The police and participating LAs will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

The police are responsible for the prevention and investigation of crimes leading to harm to scheduled monuments including deliberate damage to scheduled monuments, illegal metal-detecting on them including theft or removal of associated objects or artefacts. The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area and EH have a duty to assist and advise in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

The specific regulatory crimes for this heritage asset are set out in summary in *Appendix 2*.

Protected marine wrecks sites

The police in partnership with EH are responsible for the prevention and investigation of unauthorised activities in respect of wreck sites designated as 'restricted areas' as defined by the Protection of Wrecks Act 1973. The Receiver of Wreck will work in partnership with the police and EH where there has been a failure to report the finding of wreck under the Merchant Shipping Act 1995. Again the specific regulatory crimes for this heritage asset are set out in summary in *Appendix 2*.

The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of such crimes.

Protected military remains of aircraft and vessel of historic interest

The police will in partnership with the MOD take responsibility for the prevention and investigation of unauthorised activities in respect of crashed military aircraft and sunk or stranded military vessels which are within a protected place or controlled site. This MoU is concerned with those aircraft and military vessels which are of historic interest. Again the specific regulatory crimes for this heritage asset are set out in summary in *Appendix 2*.

The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local

government area and EH will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of such crimes.

Other sites of historic significance

There are designated sites that have no separate consent regime and no specific regulatory offences which relate to them, these sites include Registered Parks and Gardens, Battlefields and World Heritage Sites. However, crime such as theft, criminal damage and offences of anti-social behaviour can lead to harm to these heritage assets. This also applies to un-designated sites of historic importance such as archaeological sites of national importance (which have not been scheduled as monuments) and buildings of local importance.

The police are responsible for prevention and investigation of crimes leading to harm to these sites, such as theft, criminal damage and offences of anti-social behaviour. The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area and EH will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

Items illegally removed from heritage assets

Where items that are suspected of having been removed from a heritage asset come to the attention of any of the parties to this MoU each has a responsibility to notify the police who are responsible for investigation of possible related crimes such as theft and handling stolen goods. The CPS is responsible for prosecution of such crimes where there is sufficient evidence and it is in the public interest to do so. Participating LAs where this affects their local government area and EH will provide assistance and advice in any campaigns of prevention and, where their expertise is needed and resources allow, in the investigation and prosecution of any crimes.

If the finder of an object believes it to be 'treasure' within the meaning given in the Treasure Act 1996 then he/she must report that find to the coroner for the district, as failure to do so is a criminal offence (see *Appendix 2*). The reporting of treasure is dealt with through the Portable Antiquities Scheme, who also record for the public benefit all non-treasure archaeological objects found and reported voluntarily by members of the public.

7. Partnership working

Partnership working plays a fundamental role in tackling heritage crime both at a local operational level and nationally at a strategic level.

Partnership working will enable all parties to focus resources and efforts towards the heritage crime priorities when identified.

Regional partnerships will be a means to achieving a more formal strategic approach to enable LAs, the Police and EH to tackle heritage crime more effectively and expediently.

Regional partnerships will identify operational roles and responsibilities and set out effective working arrangements between the parties. This will ensure, amongst other things, that the party with the most appropriate enforcement powers can take the primary enforcement action on individual cases.

All parties within this MoU will work closely with the stakeholder group, the Alliance for the Reduction of Crime against Heritage (or ARCH). The aim of ARCH will be to contribute its understanding of the nature of heritage crime from time to time to inform strategic assessment and to assist in the effective implementation of that tactical plan arising from that strategic assessment at a regional and local level.

8. Data exchange and disclosure

Data exchange between the parties is encouraged but will only take place in appropriate circumstances and in compliance with data protection and other relevant legislation.

The signatories will work closely to develop and adopt good practice in the sharing of personal and non-personal information.

9. Guidance and training

In the spirit of partnership working all parties recognise that the sharing of knowledge and working practices is beneficial in tackling heritage crime.

All parties will provide necessary information and guidance and training as their resources allow. This will be made available to each of the parties to this MoU.

English Heritage will provide information, guidance and training on heritage assets including:

- Listed buildings;
- Scheduled monuments;
- Registered parks, gardens and battlefields;
- Protected marine wrecks;
- World Heritage Sites; and
- Conservation areas.

The Police will provide information, guidance and training including:

- Conducting investigations;
- Collecting and preparing evidence; and
- An awareness of the Police and Criminal Evidence Act 1984.

The CPS will share their information and guidance on:

- The evidential and public interest stages of the Full Code Test as set out in the Code for Crown Prosecutors;
- Case building; and
- Assisting witnesses in court, in particular expert witnesses.

10. Costs and charging

Each body will be responsible for recovering their own costs in relation to investigations and prosecutions.

Each will endeavour to obtain costs incurred by witnesses by inviting courts to impose those costs, and any other costs, on defendants.

It is anticipated that services provided by all parties to each other will be without charge.

No charges will be levied without prior agreement.

11. Lead contact points

For the purposes of this MoU the following are lead contact points:

English Heritage

Mike Harlow, Legal Director

Chief Inspector Mark Harrison, Policing Adviser – Heritage Crime Initiative

Joanne Fisher, Legal Adviser

Association of Chief Police Officers

Pete Charleston, Staff Officer to Chief Constable Richard Crompton.

Crown Prosecution Service

Arsha Gosine, Policy Adviser for Heritage Crime.

The contact for each participating LA is set out against its name in *Appendix 1*

Each police force will nominate a strategic point of contact for issues relating to heritage assets and the historic environment.

12. Publicity

All parties will endeavour to raise awareness of heritage crime through highlighting key issues and prosecution cases.

13. Review

This MoU and its implementation will be reviewed by all parties after 3 years.

If forthcoming legislation requires the document to be reviewed earlier all parties will commit to doing so at the earliest opportunity.

14. Signatories

English Heritage

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Baroness Andrews OBE, Chair of English Heritage

Association of Chief Police Officers

.....
Richard Crompton, Chief Constable, Lincolnshire Police & ACPO Rural Issues Portfolio

Crown Prosecution Service

.....
Nick Hunt, Director of Strategy and Policy Directorate, CPS

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