Home Office

Home Office Guidance

Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures

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INTRODUCTION

(a) This guidance covers the Standards of Professional Behaviour for police officers, including special constables, and sets out the procedures for dealing with misconduct, unsatisfactory performance and attendance and for appeals to the Police Appeals Tribunal. The procedures described in this guidance are designed to accord with the principles of natural justice and the basic principles of fairness, and should be administered accordingly.

(b) The guidance is issued by the Secretary of State under section 87(1) of the Police Act 1996 as amended by the Policing and Crime Act 2017, Section 32. Section 87(1) allows the Secretary of State to issue guidance to local policing bodies, chief officers of police, other members of police forces, civilian police employees and the Independent Police Complaints Commission as to the discharge of functions under regulations in relation to, among other things, the conduct, efficiency and effectiveness of police officers and the maintenance of discipline. (1B) allows the College of Policing to also issue guidance to the same groups with the approval of the Secretary of State. Sections 50(3) and 51(2A) require the regulations to establish, or make provision for the establishment of, procedures for the taking of disciplinary proceedings. Those who are responsible for administering the procedures described in this guidance are reminded that they are required to take its provisions fully into account when discharging their functions. Whilst it is not necessary to follow its terms exactly in all cases, the guidance should not be departed from without good reason. This guidance is not a definitive interpretation of the relevant legislation. Interpretation is ultimately a matter for the courts. Where examples are given in this guidance they are not intended to be exclusive or exhaustive.

(c) The guidance on the individual procedures is designed to further the aims of being fair to the individual police officer and of arriving at a correct assessment of the matter in question and providing confidence in the system.

(d) The misconduct procedures set out in this guidance apply to all police officers, including special constables.

(e) The unsatisfactory performance procedures described in this guidance apply to all police officers (except student police officers in their probationary period) up to and including the rank of Chief Superintendent and all special constables. These unsatisfactory performance procedures do not apply to senior officers.

(f) The Police (Promotion) Regulations 1996 make provision for the chief officer of police, where he or she considers that a person, who is on probation in the rank of sergeant, is unlikely to perform the duties of that rank satisfactorily, to reduce the sergeant to the rank of constable. It is therefore important that in such cases the Promotion Regulations are used and not the Conduct or Performance Regulations.

(g) Guidance on dealing with issues of misconduct or unsatisfactory performance regarding police officers on secondment under section 97 of the Police Act 1996 can be found at Annex D.

(h) Guidance on dealing with misconduct concerning a former police officer can be found at Annex G.

(i) Further guidance on the police advisory list and police barred list can be found at Annexes H and I.

Delegated authority

(j) Where reference is made to 'the appropriate authority' and the appropriate authority is a chief officer of police, he or she may delegate any of his or her functions to a police officer of at least the rank of chief

inspector or a police staff member who is, in the opinion of the chief officer, of at least a similar level of seniority to a chief inspector.

(k) However any decision regarding the suspension of a police officer, a decision on whether to consent to an officer resigning or retiring, a decision whether to refer a misconduct matter to a special case hearing or, in the case of the Performance Regulations, the decision to refer a matter direct to a stage 3 meeting for gross incompetence, must be authorised by a senior officer.

(l) The misconduct and performance procedures are designed to be dealt with at the lowest appropriate managerial level having regard to all the circumstances of the particular matter.

Glossary

Throughout the guidance the following terms will be used: -

(a) "2002 Act" means the Police Reform Act 2002.

(b) "Appropriate authority" means: -

- where the officer concerned is the chief officer of any police force or an acting chief officer, the elected local policing body for the area of the police force of which he is a member;

- in any other case, the chief officer of police of the police force concerned.

(c)"Barred List Regulations" means the Police Barred List and Police Advisory List Regulations 2017.

(d) "Chief officer" means a police officer of Chief Constable or Commissioner rank.

(e) "Complaint Regulations" means the Police (Complaints and Misconduct) Regulations 2012.

(f) "Conduct (Amendment) Regulations 2015" means the Police (Conduct) (Amendment) Regulations 2015.

(g) "Conduct Regulations" means the Police (Conduct) Regulations 2012.

(h) "Former Officer Regulations" means the Police (Conduct, Complaints, Misconduct and Appeal Tribunal Rules) (Amendment) Regulations 2017.

(i) "IPCC statutory guidance" means the Independent Police Complaints Commission Statutory Guidance which is available on the IPCC website.

(j) "misconduct proceedings" means misconduct meeting or misconduct hearing.

(k) "Performance Regulations" means the Police (Performance) Regulations 2012.

(l) "relevant authority" in relation to the barred and advisory list provisions means: -

- where the officer concerned is a former member of a police force (other than a former chief officer of police), or a former special constable, the chief officer of police of the police force of which the officer was last a member, or for which the officer was last appointed as a special constable;

- where the officer concerned is a former chief officer of police, the local policing body for the police force of which the officer was last a member.

(m) "relevant lawyer" as used in the Conduct Regulations and the Performance Regulations, includes a solicitor or barrister.

(n) "senior officer" means a police officer above the rank of chief superintendent.

(o) "working day" – means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales.

Police Friend

- Police officers have the right to consult with, and be accompanied by, a police friend at any interview during an investigation into misconduct and at all stages of the misconduct or performance proceedings.

- The police officer concerned may choose a police officer, a police staff member or (where the police officer is a member of a police force) a person nominated by the police officer's staff association to act as his or her police friend. A person approached to be a police friend is entitled to decline to act as such. A former police officer may also choose a police officer, a police staff member or a person nominated by the former officer's staff association. Where the former officer is not a member of a staff association, he or she may choose someone outside the police force to act as a police friend but this person must be approved by the chief officer of the police force where he or she last served prior to leaving policing (see Annex G, paragraph 1.10).

- A police friend cannot be appointed to act as such if he or she has had some involvement in that particular case e.g. he or she is a witness etc. A police friend should not be asked to provide an account relating to any matter connected with their role as a police friend.

- Police officers are expected to act with honesty and integrity when undertaking their role as a police friend.

The police friend can:

- Advise the police officer concerned throughout the proceedings under the Conduct Regulations and the Performance Regulations.

- Unless the police officer concerned has the right to be legally represented and chooses to be so represented, represent the police officer concerned at the misconduct proceedings, performance proceedings, appeal meeting, a special case hearing or at a Police Appeals Tribunal.

- Make representations to the appropriate authority concerning any aspect of the proceedings under the Conduct or Performance Regulations; and

- Accompany the police officer concerned to any interview, meeting or hearing which forms part of any proceedings under the Conduct or Performance Regulations.

It is good practice to allow the police friend to participate as fully as possible, but at an interview, meeting or hearing the police friend is not there to answer questions on the police officer's behalf. It is for the police officer concerned to speak for himself or herself when asked questions.

A police friend who has agreed to accompany a police officer is entitled to take a reasonable amount of duty time to fulfil his or her responsibilities as a police friend and should be considered to be on duty when attending interviews, meetings or hearings.

Subject to any timescales set out in the Conduct Regulations or the Performance Regulations, at any stage of a case, up to and including a misconduct meeting or hearing or an unsatisfactory performance meeting, the police officer concerned or his or her police friend may submit that there are insufficient grounds upon which to base the case and/or that the correct procedures have not been followed, clearly setting out the reasons and submitting any supporting evidence. It will be for the person responsible for the relevant stage of the case to consider any such submission and determine how best to respond to it, bearing in mind the need to ensure fairness to the police officer concerned.

At a misconduct meeting, hearing or special case hearing under the Conduct Regulations or the Performance Regulations where the police friend attends, he or she may –

i) put forward the police officer's case

ii) sum up that case

iii) respond on behalf of the police officer to any view expressed at the meeting

iv) make representations concerning any aspect of the proceedings

v) confer with the police officer

vi) in a misconduct meeting or hearing, ask questions of any witness, subject to the discretion of the person(s) conducting that hearing.

A police officer is entitled to be legally represented at a misconduct hearing or special case hearing (in cases that fall to be dealt with under the Conduct Regulations) or a Third Stage Performance meeting (for dealing with an issue of gross incompetence under the Performance Regulations). Where he or she decides to be so represented, the police friend can also attend and may consult with the police officer concerned, but will not carry out functions i)-iv) and vi) described above.

An officer interviewed for a criminal investigation is entitled in law to be accompanied by a lawyer; there is no entitlement to be supported by a police friend either in addition to or in place of the lawyer. Where an officer is interviewed as part of a misconduct interview, he or she is entitled to have a police friend present. It is often the case that an interview for criminal purposes is sought to be relied on subsequently for a misconduct investigation. It follows that there are benefits for both investigators and officers in allowing a police friend to be present for the criminal interview if it has the potential to be used for misconduct matters. It avoids the need for repeated interviews and allows the police friend to support the officer fully informed of the allegations. Investigators will therefore want to weigh the advantages and disadvantages of declining a request for a police friend to be present for a criminal interview, recognising that in law there is no entitlement for that to be the case.

It is not the role of the police friend to conduct his or her own investigation into the matter. Where a police friend is acting as such for a colleague from another force, then the appropriate authority for the police friend should pay the reasonable expenses of the police friend.

CHAPTER 1

Guidance on Standards of Professional Behaviour

Introduction

1. The standards of professional behaviour are set out in Schedule 2 to the Conduct Regulations. As the professional body for policing in England and Wales, the College of Policing is responsible for setting standards of policing practice and for identifying, developing and promoting ethics, values and integrity. The Code of Ethics, issued by the College of Policing, sets out in detail the principles and expected behaviours that underpin the standards of professional behaviour for everyone working in the policing profession in England and Wales. This includes police officers, to whom the Conduct Regulations apply.

1.1. The standards of professional behaviour, as reflected in the Code of Ethics, are a statement of the expectations that the police and the public have of how police officers should behave. They are not intended to describe every situation but rather to set a framework which everyone can easily understand. They enable everybody to know what type of conduct by a police officer is acceptable and what is unacceptable. The standards should be read and applied having regard to the Code of Ethics.

1.2. The standards of professional behaviour also reflect relevant principles enshrined in the European Convention on Human Rights and the Council of Europe Code of Police Ethics. The Code of Ethics is issued as a code of practice under section 39A of the Police Act 1996 (as amended). The Code of Ethics applies to everyone in the police. For the purposes of any consideration under the Conduct Regulations the standards of professional behaviour apply to police officers of all ranks from chief officer to Constable, Special Constables and to those subject to suspension.

1.3. The Code of Ethics is the framework that underpins the standards of professional behaviour as set out in the Conduct Regulations. The Code of Ethics should inform any assessment or judgement of conduct when deciding if formal action is to be taken under the Conduct Regulations.

1.4. A breach of the Code of Ethics will not always involve misconduct or require formal action under the Conduct Regulations. Managers, supervisors, professional standards departments and appropriate authorities will be expected to exercise sound professional judgement and take into account the principle of proportionality in determining how to deal effectively with relatively minor shortcomings in behaviour. In doing so, they must ensure they comply with any requirements placed on them by legislation. The Code of Ethics provides general guidance on how behaviour that does not uphold policing principles or meet expected standards should be handled.

1.5. In carrying out their duties in accordance with these standards, police officers have the right to receive the full support of the police. It is recognised that the ability of police officers to carry out their duties to the highest professional standards may depend on the provision of appropriate training, equipment and management support.

1.6. The police forces have a responsibility to keep police officers informed of changes to police regulations, local policies, laws and procedures. Police officers have a duty to keep themselves up to date on the basis of the information provided.

1.7. Where these standards of professional behaviour are being applied in any decision or misconduct meeting/hearing, they shall be applied in a reasonable, transparent, objective, proportionate and fair manner. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny.

1.8. The Code of Ethics gives examples to help police officers interpret the standards expected in a consistent way. They are not intended to be an exclusive or exhaustive list.

1.9. Where the misconduct procedure is being applied, it is important to identify the actual behaviour that is alleged to have fallen below the standard expected of a police officer, with clear particulars describing that behaviour.

1.10. It should be remembered that the unsatisfactory performance procedures exist to deal with unsatisfactory performance, attendance and issues of capability.

1.11. The headings below describe the standards of professional behaviour as they are set out in Schedule 2 to the Conduct Regulations. The Code of Ethics goes into greater detail about the expectations underlying each of these standards. There is also an additional heading below in relation to "Off-duty conduct". There are additional explanatory paragraphs below some of the headings that are outside of the scope of the Code of Ethics and which should be used in considering whether there has been a breach of the standards of professional behaviour for the purposes of formal disciplinary action under the Conduct Regulations.

Honesty and Integrity

1.12. Police officers are honest, act with integrity and do not compromise or abuse their position.

Authority, Respect and Courtesy

1.13. Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

1.14. Police officers do not abuse their powers or authority and respect the rights of all individuals.

Equality and Diversity

1.15. Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of Force

1.16. Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and Instructions

1.17. Police officers only give and carry out lawful orders and instructions.

1.18. Police officers abide by police regulations, force policies and lawful orders.

Duties and Responsibilities

1.19. Police officers are diligent in the exercise of their duties and responsibilities.

1.20. When deciding if a police officer has neglected his or her duties all of the circumstances should be taken into account. Police officers have wide discretion and may have to prioritise the demands on their time and resources. This may involve leaving a task to do a different one, which in their judgement is more important. This is accepted and in many cases essential for good policing.

Confidentiality

1.21. Police officers treat information with respect and access or disclose it only in the proper course of police duties.

1.22. Where a police officer provides any reference in a private as opposed to professional capacity, then he or she will make this clear to the intended recipient and will emphasise that it is being provided in a private capacity and no police information has been accessed or disclosed in giving such a reference.

Fitness for Duty

1.23. Police officers when on duty or presenting themselves for duty are fit to carry out their duties and responsibilities.

Discreditable Conduct

1.24. Police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.

1.25. Police officers report any action taken against them for a criminal offence, conditions imposed by a court or the receipt of any penalty notice.

1.26. Discredit can be brought on the police by an act itself or because public confidence in the police is undermined. In general, it should be the actual underlying conduct of the police officer that is considered under the misconduct procedures, whether the conduct occurred on or off duty. However where a police officer has been convicted of a criminal offence that alone may lead to misconduct action irrespective of the nature of the conduct itself. In all cases it must be clearly articulated how the conduct or conviction discredits the police.

Challenging and Reporting Improper Conduct

1.27. Police officers report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour expected.

Off-duty conduct

1.28. Police officers have some restrictions on their private life. These restrictions are laid down in the Police Regulations 2003. These restrictions have to be balanced against the right to a private life. Therefore, in considering whether a police officer has acted in a way which falls below these standards while off-duty, due regard should be given to that balance and any action should be proportionate taking into account all of the circumstances.

1.29. Even when off duty, police officers do not behave in a manner that discredits the police service or undermines public confidence.

1.30. In determining whether a police officer's off-duty conduct discredits the police, the test is not whether the police officer discredits herself or himself but the police as a whole.

1.31. Police officers are particularly aware of the image that they portray when representing the police in an official capacity even though they may be off-duty (e.g. at a conference).

1.32. When police officers produce their warrant card (other than for identification purposes only) or act in a way to suggest that they are acting in their capacity as a police officer (e.g. declaring that they

are a police officer) they are demonstrating that they are exercising their authority and have therefore put themselves on duty and will act in a way which conforms to these standards. For example, during a dispute with a neighbour a police officer who decides to produce a warrant card would be considered to be on duty.

1.33. Police officers may only hold or undertake a business interest or an additional occupation where an application to hold or undertake it has been approved in accordance with the Police Regulations 2003. Police officers do not conduct such interests or occupations if approval has been refused or withdrawn, nor do they breach any condition of approval imposed.

1.34. All forms of management action and formal outcomes for misconduct are available in response to off-duty conduct.

CHAPTER 2

Guidance on Police Officer Misconduct Procedures

General

2. This procedure applies to all police officers (including special constables) and underpins the Standards of Professional Behaviour which set out the high standards of behaviour that the police service and the public expect of police officers. Any failure to meet these standards may undermine the important work of the police service and public confidence in it.

2.1. This guidance applies to the handling of misconduct cases that have come to the notice of the appropriate authority on or after the 22nd November 2012. Cases arising before that date will continue to be dealt with under the Police (Conduct) Regulations 2008 or the Police (Performance) Regulations 2008, with certain modifications. Earlier editions of this guidance continues to apply in those cases, but regard should be had to the transitional provisions in the Conduct Regulations and the Police (Performance) Regulations 2012 which set out the ways in which the 2008 Regulations are modified to reflect the replacement of police authorities by Police and Crime Commissioners and the transfer of responsibility for senior officers to the chief officer of police.

2.2. It is the date that the misconduct allegation comes to the attention of the appropriate authority that matters for the purpose of which regulations apply and not the date on which the misconduct is alleged to have taken place. Historic misconduct that has come to the attention of the appropriate authority on or after 22 November 2012 must be dealt with under the Police (Conduct) Regulations 2012 and not the regulations that would have applied at the time the misconduct is alleged to have occurred. Only cases that the appropriate authority was already aware of before 22nd November 2012 should be dealt with under older regulations.

2.3. The misconduct procedures aim to provide a fair, open and proportionate method of dealing with alleged misconduct. The procedures are intended to encourage a culture of learning and development for individuals and/or the organisation.

2.4. Disciplinary action has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the police service).

2.5. The misconduct procedure has been prepared by the Home Office in consultation with the National Policing Lead for Complaints and Misconduct, the Police Federation of England and Wales (PFEW), the Police Superintendents' Association of England and Wales (PSAEW), the Chief Police Officers' Staff Association (CPOSA), the Association of Police and Crime Commissioners (APCC), the Association of Policing and Crime Chief Executives (APACE), Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), the College of Policing and the Independent Police Complaints Commission (IPCC).

2.6. The police misconduct procedures are designed to reflect what is considered to be best practice in other fields of employment while recognising that police officers have a special status as holders of the Office of Constable. The police service is committed to ensuring that the procedure is applied fairly to everyone.

2.7. It is important that managers understand their responsibility to respond to, and deal promptly, and effectively with, unsatisfactory behaviour and complaints about police conduct from members of the

public and/or colleagues. It is a key responsibility of all managers to understand and apply the procedure in a fair, proportionate and timely manner.

2.8. Complaints and misconduct should be dealt with at the lowest appropriate managerial level and the police service will support any manager who has exercised his or her judgement reasonably and adhered to the guidance provided.

2.9. Where the conduct is linked to a complaint, recordable conduct matter or death or serious injury matter (as defined in section 12 of, and paragraph 11 of Schedule 3 to, the 2002 Act) the appropriate authority is required to follow the provisions in the 2002 Act, the accompanying Complaint Regulations and the IPCC statutory guidance which set out how complaints by members of the public are to be dealt with.

2.10. Those officers who choose to give notice to resign or retire following an allegation that amounts to gross misconduct will remain subject to the Conduct Regulations and the Complaints and Misconduct Regulations by virtue of the Former Officer Regulations 2017 described in Annex G. This allows misconduct investigations and proceedings that could have led to dismissal to be taken to their conclusion, notwithstanding the departure of the police officer.

2.11. The misconduct procedures should not be used as a means of dealing with unsatisfactory performance (see assessment stage at paragraph 2.107). The unsatisfactory performance procedures (see CHAPTER 3) exist to deal with issues of individual unsatisfactory performance and attendance.

Cases involving more than one allegation

2.12. Where an appropriate authority is considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purpose of making an assessment, finding, determination or decision in connection with the conduct that is the subject of the allegation. Therefore in making the severity assessment, the assessor may determine whether all the conduct alleged (taken together) would meet the test of misconduct or gross misconduct.

Student police officers

2.13. Student police officers (probationary constables) are not subject to the procedures for dealing with unsatisfactory performance, since there are separately established procedures for dealing with the performance of student police officers. However, student police officers are subject to the misconduct procedures. The chief officer has discretion whether to use the misconduct procedures or the procedures set out at regulation 13 of the Police Regulations 2003 (Discharge of probationer) as the most appropriate means of dealing with a misconduct matter. In exercising this discretion due regard should be given to whether the student police officer admits to the conduct or not. Where the misconduct in question is not admitted by the student police officer then, in most if not all cases, the matter will fall to be determined under the misconduct procedures. If the regulation 13 procedure is used, the student police officer should be given a fair hearing (i.e. an opportunity to comment and present mitigation) under that procedure. It should also be noted, that where a regulation 13 procedure has been used and leads to dismissal, the officer will not be added to the police barred (or advisory) lists and thus could be reappointed or reemployed in policing in future. Where this is not considered likely to be appropriate, again a chief officer may consider the Conduct Regulations to be the more appropriate route.

Former police officers

2.14. A former police officer who is subject to an allegation of gross misconduct can be subject to the police misconduct procedures under the conditions and procedures outlined in Annex G.

2.15. An investigation or disciplinary proceedings can be brought against an officer who is no longer serving where:

i. An individual resigns or retires during the course of an investigation or before disciplinary proceedings have concluded where the matter if proven would amount to gross misconduct;
ii. An allegation amounting to gross misconduct arises after an officer has left the police force;
iii. If the allegation is raised within 12 months the matter can be investigated and subject to disciplinary proceedings (where amounting to gross misconduct);
iv. Beyond 12 months, the matter can be investigated but only be subject to disciplinary proceedings where the matter amounts to gross misconduct AND is subject to a special determination that it is reasonable and proportionate for proceedings to be brought.

2.16. Where the outcome of the misconduct hearing is one where the conduct of the former officer amounts to gross misconduct (as described in Annex G, paragraph 1.40) disciplinary action can be imposed and the form of that disciplinary action is that the officer would have been dismissed if he was still a serving officer (as described in Annex G, paragraph 1.40 (g))and the individual will be placed on the barred list.

Protections for whistleblowers

2.17. It is essential that officers are confident that reporting wrongdoing will be a positive experience and not result in detrimental treatment by their force or colleagues. The definition of Standards of Professional Behaviour in regulation 3(1) makes it clear that the making of a protected disclosure by a police officer is not a breach of those standards.

Definition of a protected disclosure

2.18. Whilst police officers should not be discouraged from reporting any issue of concern, the protections in Regulations and guidance apply to police officers who make a protected disclosure in accordance with the definition of "protected disclosure" in Part IVA of the Employment Rights Act 1996.

2.19. A "protected disclosure" must first be a qualifying disclosure which is made by a worker. By virtue of section 43KA of the Employment Rights Act 1996, a police officer is treated as a worker.

2.20. A "qualifying disclosure" is defined under section 43B as any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

a. that a criminal offence has been committed, is being committed or is likely to be committed, that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
b. that a miscarriage of justice has occurred, is occurring or is likely to occur;
c. that the health or safety of any individual has been, is being or is likely to be endangered;
d. that the environment has been, is being or is likely to be damaged; or
e. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

2.21. Reporting any breach of the Standards of Professional Behaviour should be considered a qualifying disclosure under (b) if not covered elsewhere. Reporting wider failings by the force to meet its legal obligations to the public, for example ignoring statutory guidance or codes of practice such as

PACE, or failing to meet common law obligations such as the duty to prevent and detect crime, would also be considered a qualifying disclosure.

2.22. Where an officer makes a qualifying disclosure to their own police force, or in accordance with a procedure authorised by the force, for example reporting to the IPCC, HMICFRS, the local policing body, a staff association or any other reporting route outlined in the force reporting policy, no further criteria need to be met for a qualifying disclosure to be considered a protected disclosure. Disclosure to the IPCC is in any event protected where the officer reasonably believes that the disclosure relates to the conduct of a person serving with the police (or any other person whose conduct the IPCC exercises functions over) and that the information disclosed, and any allegation contained in it, are substantially true.

2.23. A qualifying disclosure made by a police officer to someone else, including a disclosure to the media, will be protected if the following tests are met:

a. The officer reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
b. They do not make the disclosure for personal gain;
c. One of the following applies:
    i. At the time they make the disclosure, the officer reasonably believes that they will be subjected to a detriment by their force if they make a disclosure in one of the other ways described above;
    ii. That the officer has previously made a disclosure of substantially the same information to one of the other persons described above;
d. In all the circumstances of the case, it is reasonable for the officer to make the disclosure.

2.24. If the disclosure relates to a matter of an exceptionally serious nature, the test under (c) does not have to be met.

2.25. As is clear from the above, reporting to the media or other external sources should be the last resort for a police officer. Police forces and the IPCC have robust mechanisms in place to deal with officers' concerns and officers are expected to use these existing channels. Other alternative reporting routes including staff associations and the local policing body may also be used.

2.26. However, there may be circumstances where, for example, an officer has attempted to disclose a serious matter internally or to the IPCC but no action has been taken, and it is in the public interest and reasonable for the matter to be escalated. As set out in paragraph 2.23, the officer must reasonably believe the information disclosed, and any allegation contained in it, are substantially true. Police officers are aware of the standards of evidence required to support an allegation and unsubstantiated allegations will not be protected.

2.27. The duty of confidentiality set out under the Standards of Professional Behaviour does not prevent an officer making a protected disclosure to others (including the media), provided the tests described above (including reasonableness) are met. For example, disclosing names of victims or informants or risking current investigations and prosecutions may result in serious harm and therefore the circumstances will be rare in which such a disclosure would be considered reasonable.

2.28. As set out in paragraph 2.23, a media disclosure made for personal gain, financial or otherwise, is never protected and may constitute an offence of police corruption.

<u>False allegations made by whistleblowers</u>

2.29. Making a deliberately false allegation against another officer or member of staff is dishonest and could amount to perverting the course of justice in cases in which it relates to a criminal matter. A

protected disclosure must, in the reasonable belief of the whistleblower, tend to show that misconduct or malpractice has occurred. Deliberately false allegations will never be protected disclosures and may be assessed as amounting to gross misconduct.

2.30. Whilst a protected disclosure must be in the public interest, and cannot be deliberately false, it is not required to be made in good faith. The relevant tests for a protected disclosure are set out at paragraphs 2.19- 2.25 above.

Immunity

2.31. An officer's actions in making a protected disclosure should not result in disciplinary action being taken against them. However, the Regulations do not confer immunity from disciplinary action in respect of any other aspect of the whistleblower's behaviour, for example if they were involved in the misconduct they reported or any other misconduct. It is a matter for the force and the panel as to whether an officer's actions in coming forward with information should be considered as a mitigation for any involvement the officer has had in the reported misconduct.

2.32. The Regulations do not confer immunity for any failure by the whistleblower to challenge or report the reported misconduct at the time. Such immunity may be appropriate in some circumstances but the length of time that has passed, and any harm caused by not reporting at the time, would need to be considered.

Hearings in public

2.33. Officers and staff who report misconduct may subsequently be required to give evidence at misconduct hearings held in public. The Regulations give the person chairing or conducting misconduct proceedings a broad discretion to exclude any person from all or part of the proceedings. The person chairing or conducting also has a duty under the regulations to require attendees to withdraw where evidence will be given that should not be disclosed to such attendees under the harm test set out in the regulations. The person chairing or conducting the proceedings should consider whether the harm test applies and, if not, whether it may be necessary to use the discretionary power in relation to preventing the disclosure of information about the identity of a police witness. This consideration should take place for all police witnesses, but may be particularly relevant in certain circumstances, for example if a police witness is operating in a covert or firearms role where their identity should not be made public, or if they are the victim of the alleged misconduct and it is sexual in nature.

2.34. Officers and staff giving evidence at a misconduct hearing in public must answer any question put to them, and as a result the information may end up in the public domain. Officers should inform the chair if they consider any information they are about to disclose would be harmful if disclosed publicly.

Reprisals against whistleblowers

2.35. An officer who knowingly takes action as a reprisal against a police officer or member of staff who has made a protected disclosure, or their family members or other close associates, should be considered to have breached the Standards of Professional Behaviour. Such a breach would constitute a recordable conduct matter. The protected disclosure must have been made before the reprisal took place and the officer must have known about the protected disclosure and acted deliberately to cause detriment to the police officer or member of staff who made the disclosure.

2.36. A reprisal against a whistleblower could take the form of a deliberately false allegation, or a level of disciplinary action that is clearly more serious than that taken in relation to others who commit the

same misconduct. Reprisals could also be in the form of intimidation, bullying, isolation, personnel matters such as staff moves and promotions and any other adverse treatment.

2.37. This should not prohibit allegations being made against whistleblowers and investigated, but, where an officer who has made a protected disclosure is subsequently subject to a contested allegation, the possibility of a reprisal should be part of the consideration at the 'case to answer' decision, the severity assessment and at any subsequent disciplinary proceedings, once all the evidence is available.

2.38. Counter allegations may make it difficult to distinguish between an officer reporting or addressing wrongdoing, and an allegation or action taken as a reprisal. Further investigation may be required when considering such cases to determine whether there is evidence of a clearly aggrieved party and perpetrator. It will not always be the case that the first to report a reprisal is the victim.

2.39. There may be some reprisals that would constitute a criminal offence. This could be due to the seriousness of the reprisal or where a whistleblower is a witness to a criminal matter, and an attempt is made to intimidate them.

2.40. An allegation of a reprisal against a whistleblower should be assessed and where justified, recorded and investigated in the same way as any other conduct matter, based on the available evidence.

Suspension, restricted or change of duty

2.41. The decision to suspend a police officer will only be taken where there is an allegation of misconduct/gross misconduct and:

a. An effective investigation may be prejudiced unless the police officer is suspended; or

b. The public interest, having regard to the nature of the allegation and any other relevant considerations, requires that the police officer should be suspended; and

c. A temporary move to a new location or role has been considered but is not appropriate in the circumstances.

d. A temporary move to a new location or role must always be considered first as an alternative to suspension.

2.42. While suspended under the Conduct Regulations, a police officer ceases to hold the office of constable and, in the case of a member of a police force, ceases to be a member of a police force, save for the purposes of misconduct proceedings. They also remain subject to the Standards of Professional Behaviour.

2.43. Where it is decided that the police officer will be suspended from duty, this will be with pay. The rate of any pay, including relevant allowances, will be that which the officer would be entitled to if not so suspended. This is subject to Schedule 2 to the Police Regulations 2003.

2.44. Paragraph 1 of Schedule 2 to the Police Regulations 2003 provide for pay to be withheld when a police officer who is suspended:

a. is detained in pursuance of a sentence of a court in a prison or other institution to which the Prison Act 1952 applies, or is in custody (whether in prison or elsewhere) between conviction by a court and sentence, or

b. has absented him or herself from duty and whose whereabouts are unknown to the chief officer (or an assistant chief officer acting as chief officer) or in the case of a senior officer the local policing body.

2.45. The police officer or his or her police friend may make representations against the initial decision to suspend (within 7 working days beginning with the first working day after being suspended) and at any time during the course of the suspension if they believe the circumstances have changed and that the suspension is no longer appropriate.

2.46. Suspension is not a formal misconduct outcome and does not suggest any prejudgement.

2.47. The period of suspension should be as short as possible and any investigation into the conduct of a suspended police officer should be made a priority.

2.48. The police officer should be told exactly why he or she is being suspended, or being moved to other duties and this should be confirmed in writing. If suspension is on public interest grounds, it should be clearly explained, so far as possible, what those grounds are.

2.49. The use of suspension must be reviewed at least every 4 weeks, and sooner where facts have become known which suggest that suspension is no longer appropriate. In cases where the suspension has been reviewed and a decision has been made to continue that suspension, the police officer must be informed in writing of the reasons why.

2.50. Suspension of non senior officers must be authorised by a senior officer although the decision can be communicated to the police officer by an appropriate manager. The chief officer is responsible for the suspension of senior officers within his or her force and the elected local policing body is responsible for the suspension of the chief officer.

2.51. In cases where the IPCC are supervising, managing or independently investigating a matter, the appropriate authority will consult with the IPCC before making a decision whether to suspend or not. It is the appropriate authority's decision whether to suspend a police officer or not. The appropriate authority must also consult the IPCC before making the decision to allow a police officer to resume his or her duties following suspension (unless the suspension ends because there will be no misconduct or special case proceedings or because these have concluded) in cases where the IPCC are supervising, managing or independently investigating a case involving that police officer.

2.52. In cases where the 2002 Act applies, the investigator will be responsible for ensuring that the appropriate authority is supplied with sufficient information to enable it to effectively review the need for continuing the suspension.

2.53. The Standards of Professional Behaviour continue to apply to police officers who are suspended from duty. The appropriate authority can impose such conditions or restrictions on the police officer concerned as are reasonable in the circumstances e.g. restricting access to police premises or police social functions.

2.54. Police officers who are suspended from duty are still allowed to take their annual leave entitlement in the normal way whilst so suspended, providing they seek permission from the appropriate authority. The appropriate authority should not unreasonably withhold permission to annual leave. Any annual leave not taken by the police officer concerned within a year will still be subject to the rules governing the maximum number of days that may be carried over.

2.55. Regulation 10 does not apply to former police officers.

Consent to notice of intention to resign or retire under regulation 10A

2.56. From 15th December 2017 regulation 10A, as introduced by the Police (Conduct) (Amendment) Regulations 2014, will be revoked and will therefore no longer apply. This will remove the restriction up to that date which prevents a police officer from giving notice to resign or retire whilst subject to an ongoing investigation or disciplinary proceedings, where an allegation or complaint has been received that could lead to dismissal.

2.57. As a result, from 15th December 2017, police officers who are the subject to any allegation of misconduct or gross misconduct brought under the Conduct Regulations 2012 may give notice of intent to resign or retire.

2.58. Those officers who choose to give notice to resign or retire following an allegation that amounts to gross misconduct will remain subject to the Conduct Regulations and the Complaints and Misconduct Regulations by virtue of the Former Officer Regulations 2017 described in Annex G. This allows misconduct investigations and proceedings that could have led to dismissal to be taken to their conclusion, notwithstanding the departure of the police officer.

2.59. Those police officers who are prevented from resigning or retiring at 15 December 2017 because they are under investigation under the Conduct Regulations will be able to give notice of intent to resign or retire and those officers will be subject to the Former Officer Regulations 2017 and the proceedings taken to their conclusion.

2.60. A determination on retirement was made in 2013 under the powers conferred by regulation 14 of the Police Regulations 2003 that included a requirement that when suspended under the Conduct Regulations, an officer needed the consent of the chief officer before retirement. That determination has been amended in line with the reforms introduced by section 29 of the Policing and Crime Act 2017 and officers suspended under the Conduct Regulations will no longer need the consent of the Chief officer before retiring. Where an officer is suspended while under investigation for gross misconduct that falls outside of the 2012 Conduct Regulations they may still be subject to the determination on retirement that they need the consent of the chief officer before retiring.

2.61. Officers who resign or retire during the course of an investigation, or who leave and a relevant allegation later comes to light, will be included on the police advisory list. In these cases, the relevant authority of the individual will send a report to the College of Policing, containing the information set out in the Barred List Regulations and the individual will be included on the advisory list. More information is included in Annex H.

2.62. The Home Secretary considers it to be in the public interest that misconduct investigations and proceedings against police officers that could lead to dismissal are taken to their conclusion or in the case of former officers would have led to dismissal. Any exceptional circumstances should, in the opinion of the appropriate authority, be of sufficient severity that they outweigh the public interest in a case being taken to its conclusion. In such cases the appropriate authority should weigh any exceptional circumstances against the public interest. In the case of a Condition C person (described in Annex G) a special determination must be made by the IPCC.

2.63. An exceptional circumstance can be where an officer is medically unfit. Here we are referring to being unfit to be the subject of conduct proceedings and not being unfit for duty. It is for the officer concerned to make out his or her case that they are medically unfit or that there are other exceptional circumstances. This includes obtaining independent evidence of their being medically unfit to continue to

be the subject of any proceedings brought under the Conduct Regulations. The appropriate authority should assess the evidence presented to them by the officer concerned or their representative and determine whether the officer concerned is medically unfit or whether exceptional circumstances apply. Where the officer has not provided evidence meeting this threshold, and the appropriate authority is not convinced on the basis of any other evidence available to it that one of the conditions is met, the appropriate authority should continue with the misconduct proceedings.

Conducting investigations where there are possible or outstanding criminal proceedings

2.64. Where there are possible or outstanding criminal proceedings against a police officer, these will not normally delay the misconduct proceedings. They will only delay proceedings under the Conduct Regulations where the appropriate authority considers such action would prejudice the outcome of the criminal case. The presumption is that action for misconduct should be taken prior to, or in parallel with, any criminal proceedings. Where it is determined that prejudice to the outcome of the criminal case would result, then this decision shall be kept under regular review to avoid any unreasonable delay to the misconduct proceedings.

2.65. Where potential prejudice is identified, the proceedings under the Conduct Regulations will proceed as normal up until the referral of a case to misconduct proceedings or a special case hearing. So the matter will be investigated under the Conduct Regulations or Complaint Regulations and the investigation report submitted. The appropriate authority will then decide whether there is a case to answer in respect of misconduct or gross misconduct or neither. Where the decision is made that the matter amounts to misconduct and that management action is appropriate, then this can be taken without the need to refer the matter to misconduct proceedings. In other cases where there is a case to answer, no referral to misconduct proceedings or a special case hearing will take place if this would prejudice the criminal proceedings.

2.66. As soon as it appears to the appropriate authority that there is no longer any potential prejudice (because, for example, a witness is no longer going to be called, the trial has concluded or any other circumstances change), the appropriate authority must take action. Where misconduct proceedings were delayed, the appropriate authority shall make a determination whether to continue with the misconduct proceedings. This determination will include consideration as to whether the special conditions exist for using the fast track procedures (see Annex A).

2.67. The appropriate authority should always consider whether in proceeding with a misconduct meeting or hearing in advance of any potential criminal trial, there is a real risk of prejudice to that trial. If there is any doubt then advice should be sought from the Crown Prosecution Service (CPS) or other prosecuting authority.

2.68. In a case where a witness is to appear at a misconduct meeting or hearing and is also a witness or potentially a witness at the criminal trial then the appropriate authority must first consult with the CPS (or other prosecuting authority). Having carefully considered the views of the CPS the appropriate authority must then decide whether it would prejudice a criminal trial if the misconduct meeting or hearing proceeds.

2.69. It is important to note that a misconduct meeting/hearing is concerned with whether the police officer concerned breached the Standards of Professional Behaviour and not whether the police officer has or has not committed a criminal offence.

2.70. The decision as to when to proceed with a misconduct meeting/hearing rests with the appropriate authority.

2.71. At the end of a misconduct meeting/hearing, where there are also outstanding or possible criminal proceedings involving the police officer concerned, the CPS or other prosecuting authority shall (as soon as practicable) be informed of the outcome of the meeting/hearing.

Misconduct action following criminal proceedings

2.72. Subject to the guidance above, where misconduct proceedings have not been taken prior to criminal proceedings and the police officer is acquitted, consideration will then need to be given as to whether instigating misconduct proceedings or a special case hearing is a reasonable exercise of discretion in the light of the acquittal.

2.73. A previous acquittal in criminal proceedings in respect of an allegation which is the subject of misconduct or special case proceedings is a relevant factor which should be taken into account in deciding whether to continue with those proceedings.

2.74. Relevant factors in deciding whether to proceed with disciplinary or special case proceedings include the following, non-exhaustive, list:

a. Whether the allegation is in substance the same as that which was determined during criminal proceedings;
b. Whether the acquittal was the result of a substantive decision on the merits of the charge (whether by the judge or jury) after the hearing of evidence; and
c. Whether significant further evidence is available to the misconduct meeting/hearing, either because it was excluded from consideration in criminal proceedings or because it has become available since.

2.75. Each case will fall to be determined on its merits and an overly-prescriptive formula should not be adopted.

2.76. It may further be unfair to proceed with misconduct proceedings in circumstances where there has been a substantial delay in hearing disciplinary or special case proceedings by virtue of the prior criminal proceedings.

2.77. Regard should be had in this respect to such factors as:

a. the impact of the delay on the police officer (including the impact on his or her health and career);
b. whether the delay has prejudiced his or her case in any disciplinary or special case proceedings; and
c. whether there will be a further substantial delay whilst disciplinary or special case proceedings are heard (including the impact on the police officer of that delay).

Fast track procedures (special cases)

2.78. Guidance on dealing with special cases where the fast track procedures can be used can be found at Annex A.

Link between misconduct procedures and complaints, conduct matters and death or serious injury cases to which the 2002 Act applies

2.79. The 2002 Act and the Complaint Regulations set out how complaints, conduct matters and death or serious injury (DSI) matters must be handled. All other cases are dealt with solely under the Conduct Regulations.

2.80. The 2002 Act and the Complaint Regulations also set out the matters that are required to be referred to the IPCC.

Complaints – Local Resolution

2.81. The 2002 Act, Complaint Regulations and IPCC statutory guidance set out when complaints are suitable for Local Resolution and these procedures will continue to apply. It may be appropriate for a manager to take management action as part of locally resolving a complaint. This is perfectly acceptable. However this will not be considered as formal disciplinary action although it does not prevent a manager from making a note of the action taken and recording this on the police officer's Performance and Development Review (PDR) or equivalent (if appropriate).

Complaints – Investigation

2.82. Where a complaint about the conduct of a police officer or special constable is not suitable to be locally resolved or fails, then the matter will need to be investigated under the provisions of the 2002 Act and the Complaint Regulations.

2.83. The investigation into the complaint must be proportionate having regard to the nature of the allegation and any likely outcome (see also IPCC statutory guidance).

2.84. An investigation into a complaint is not automatically an investigation into whether a police officer or a special constable has breached the standards of professional behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainant of the actions of one or more persons serving with the police.

2.85. The 2002 Act and the Complaint Regulations set how the investigator shall be appointed to investigate the complaint and in addition set out: -

a. When a complaint is subject of special requirements (see paragraph 2.86);

b. when a severity assessment must be made;

c. the information required to be notified to the police officer concerned;

d. the duty of the investigator to consider relevant statements and documents;

e. arrangements for interviewing the person whose conduct is being investigated; and

f. the matters to be included in the investigation report.

Special requirements

2.86. If, during an investigation into a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have –

a. committed a criminal offence, or

b. behaved in a manner which would justify the bringing of disciplinary proceedings, the person investigating (the investigator) must certify the investigation as one subject to special requirements (paragraph 19A of Schedule 3 to the 2002 Act). Conduct matters, by definition, are subject to the special requirements.

2.87. Where the person investigating does not consider that the conduct subject of the investigation either amounts to a criminal offence or (even if proven or admitted) would (in the investigator's judgement) be referred to a misconduct meeting or hearing, the matter will not be subject of the special requirements and no regulation 16 (Complaint Regulations) notice will be served on the police officer concerned and no severity assessment will be required. If the person investigating the complaint does certify the investigation as one subject of special requirements, the investigator must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct (see below).

Severity assessment

2.88. The severity assessment means an assessment as to –

a. whether the conduct of the police officer concerned, if proved, would amount to misconduct or gross misconduct, and

b. if misconduct, the form (i.e. misconduct meeting or hearing) which disciplinary proceedings would be likely to take if the conduct were to become subject of such proceedings.

2.89. The severity assessment may only be made after consultation with the appropriate authority. The investigator shall ensure that a written notice is provided to the police officer concerned informing him or her that his or her conduct is being investigated unless the person investigating the complaint considers that giving the notification might prejudice –

a. the investigation, or

b. any other investigation (including, in particular, a criminal investigation).

(See paragraph 2.143 regarding written notices).

2.90. The written notice may indicate that although the conduct would amount to misconduct rather than gross misconduct, the fact that the police officer concerned has an outstanding live final written warning will mean that should the matter proceed to misconduct proceedings, those proceedings would take the form of a misconduct hearing.

2.91. Where the person investigating the complaint determines that the special requirements are not met (as there is no indication that the matter amounts to a criminal offence or the matter would not justify referring the matter to misconduct proceedings) then there is no requirement for a severity assessment and therefore no requirement to serve a written notice on the police officer concerned.

2.92. If, during the course of the investigation the investigator determines that the severity assessment should change due to the initial assessment being incorrect or new information being found that affects the original assessment, then a fresh assessment can be made and the police officer concerned informed accordingly. Considerable care should be taken in making the severity assessment or revising the assessment in order to avoid any unfairness to the police officer concerned. All decisions in determining or revising the severity assessment should be documented with reasons for the decision.

Investigation of Conduct matters

2.93. A conduct matter is defined in the 2002 Act as:

a. 'any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have-

b. committed a criminal offence; or

c. behaved in a manner which would justify the bringing of disciplinary proceedings'.

2.94. Paragraphs 10 and 11 of Schedule 3 to the 2002 Act and regulation 7 of the Complaint Regulations set out the conduct matters that are required to be recorded by the appropriate authority (recordable conduct matters).

2.95. Paragraph 13 of Schedule 3 to the 2002 Act and regulation 7 (4) of the Complaint Regulations set out the categories of recordable conduct matters that are required to be referred to the IPCC. Conduct matters that are not required to be recorded or referred to the IPCC may be dealt with by the appropriate authority. Where the appropriate authority determines that these conduct matters should be investigated, then this will be conducted under the provisions of the Conduct Regulations.

2.96. Recordable conduct matters are subject to the special requirements mentioned at paragraph 2.86 above and therefore the person investigating the matter will be required to undertake a severity assessment (see paragraphs 2.88 to 2.92 above) and comply with the special requirements.

Investigation report following complaint (subject of special requirements)/recordable conduct matter investigations

2.97. At the conclusion of an investigation into a complaint where the matter has been subject to the special requirements or constitutes a recordable conduct matter, the investigator, in addition to setting out his or her conclusions on the facts of the matter, will indicate whether he or she determines on the facts of the case that there is a case to answer in respect of misconduct or gross misconduct or that there is no case to answer. The investigator may also determine that the facts of the case indicate that there is a case to answer in respect of unsatisfactory performance.

2.98. The action that an appropriate authority proposes or does not propose to take in response to an investigation of a complaint may be subject to an appeal by a complainant. The IPCC has the power in certain cases to recommend and direct that particular misconduct proceedings or unsatisfactory performance proceedings are held in respect of complaint and recordable conduct investigations (see further paragraph 2.190).

Referring a matter to misconduct proceedings following investigation of a complaint (subject of special requirements) or a recordable conduct matter

2.99. Where, following the investigation into a complaint subject to the special requirements or a recordable conduct matter, it is determined that there is a case to answer in respect of misconduct or gross misconduct then the appropriate authority will determine whether the matter should be referred to a misconduct meeting or hearing. This decision should be made as quickly as possible.

2.100. Where the appropriate authority determines that there is a case to answer in respect of misconduct but not gross misconduct it may determine that management action is an appropriate and proportionate response to the misconduct.

2.101. Where it is determined that there is a case to answer in respect of misconduct and management action is not appropriate, the appropriate authority shall refer the matter to a misconduct meeting (unless the police officer concerned has an outstanding final written warning which was live when the severity assessment was made, in which case the matter will be referred to a misconduct hearing).

2.102. In cases where there is a case to answer in respect of gross misconduct then the matter shall be referred to a misconduct hearing (or if the special conditions are satisfied a special case (fast track) hearing). See definition of Gross misconduct at paragraph 2.116 below.

2.103. Referral to misconduct proceedings and the procedures to be followed thereafter are made under Part 4 (and Part 5 if appropriate) of the Conduct Regulations (regulation 19 onwards).

Death or Serious Injury matters (DSI)

2.104. Where there is an investigation into a death or serious injury case (DSI), where there is no complaint or indication of any conduct matter, then the investigation will focus on the circumstances of the incident (see also IPCC statutory guidance).

2.105. However, where during the course of the investigation into the DSI matter there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings then the DSI matter will be reclassified as a recordable conduct matter (or complaint if appropriate) and dealt with accordingly.

Misconduct Procedures

Assessment of conduct – (Is the case one of misconduct?)

2.106. Where an allegation is made against the conduct of a police officer or special constable, being a matter that does not involve a complaint, a recordable conduct matter or a death or serious injury (see paragraph 2.79 above), the matter will be dealt with under the Conduct Regulations from the outset. However, in the same way as described in paragraph 2.88 above, the appropriate authority must formally assess whether the conduct alleged, if proved, would amount to misconduct or gross misconduct.

2.107. The assessment may determine that the conduct alleged amounts to an allegation of unsatisfactory performance rather than one of misconduct. In such circumstances the matter should be referred to be dealt with under the UPPs (See CHAPTER 3).

2.108. The assessment may determine that the matter is more suitable to be dealt with through the grievance procedure. In such cases the procedures for dealing with such matters should be used.

2.109. The purpose of the initial assessment is to:

a. Ensure a timely response to an allegation or an issue relating to conduct

b. Identify the police officer subject to the allegation and to eliminate those not involved.

c. Ensure that the most appropriate procedures are used.

2.110. The assessment should be made by the appropriate authority (see delegation of authority in the Introduction section and glossary definition). The person making the assessment should always consider consulting the Professional Standards Department (PSD) or Human Resources Department for assistance.

2.111. If it is not possible to make an immediate assessment a process of fact finding should be conducted but only to the extent that it is necessary to determine which procedure should be used. It is perfectly acceptable to ask questions to seek to establish which police officers may have been involved in a particular incident and therefore to eliminate those police officers who are not involved.

2.112. A formal investigation into a particular police officer's conduct affords the police officer certain safeguards in the interests of fairness such as the service of a notice informing the police officer that his or her conduct is subject to investigation and notifying the police officer of his or her right to consult with a police friend. The initial assessment and in particular fact finding should therefore not go so far as to undermine these safeguards.

2.113. Even if the person making the assessment has decided that the matter is not potentially one of misconduct he or she should consider whether there are any developmental or organisational issues which may need to be addressed by the individual (e.g. through management action) or the organisation.

Definitions

2.114. For the purposes of making the assessment and any decision on the seriousness of the conduct the following definitions will be applied:-

Misconduct

2.115. Misconduct is a breach of the Standards of Professional Behaviour (see CHAPTER 1).

Gross Misconduct

2.116. Gross misconduct means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

2.117. Therefore, for a matter to be assessed as gross misconduct, the person making the assessment needs to be satisfied that dismissal would be justified if the conduct alleged was proven or admitted, having regard to all the circumstances of the case. If he or she is not so satisfied then the matter should be assessed as misconduct rather than gross misconduct.

Unsatisfactory Performance/Attendance

2.118. Unsatisfactory performance or unsatisfactory attendance mean an inability or failure of a police officer to perform the duties of the role or rank he or she is currently undertaking to a satisfactory standard or level (see CHAPTER 3).

Severity assessment – Is the matter potentially misconduct or gross misconduct?

2.119. The purpose of assessing whether a matter is potentially misconduct or gross misconduct is to:

a. Allow the police officer subject to the misconduct procedures to have an early indication of the possible outcome if the allegation is proven or admitted.

b. Give an indication of how the matter should be handled (for example, locally or by the force Professional Standards Department).

2.120. Where an allegation is made which indicates that the conduct of a police officer did not meet the standards set out in the Standards of Professional Behaviour, the appropriate authority must decide whether, if proven or admitted, the allegation would amount to misconduct or gross misconduct.

2.121. Where it is determined that the conduct, if proved, would constitute misconduct, it must further be determined whether it is necessary for the matter to be investigated or whether management action is the appropriate and proportionate response to the allegation. If the appropriate authority decides to take no action or management action, this should be notified to the police officer concerned.

2.122. In making an assessment of conduct, the starting point should be the circumstances and context of the allegation, taking into account the extent of known information and evidence that is relevant to the allegation. The assessment should then be forward looking by considering the nature and weight of evidence that might be obtained, as well as the extent to which it is relevant and proportionate to seek and obtain such evidence.

2.123. An assessment as to whether an allegation should be investigated as misconduct or gross misconduct should be balanced and should take into account the seriousness of the allegation and the likely conclusions that could be reasonably drawn from all the evidence that can be foreseeably secured during the course of the investigation. The assessment should also consider foreseeable mitigating factors in the event that the conduct alleged is either admitted or found proven.

2.124. Where it is determined that the conduct if proved, would constitute gross misconduct (see paragraph 2.116 and 2.117) then the matter will be investigated (unless the assessment is subsequently changed to misconduct in which case, if appropriate, no further investigation may be required).

2.125. The assessment will also determine whether, if the matter was referred to misconduct proceedings, those proceedings would be likely to be a misconduct meeting (for cases of misconduct) or a misconduct hearing (for cases of gross misconduct or if the police officer concerned has a live final written warning at the time of the assessment and there is a further allegation of misconduct).

2.126. If the initial assessment has been made incorrectly or if new evidence emerges, then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness to the police officer, where a further severity assessment is made which alters the original assessment then the police officer will be informed and will be provided with the reasons for the change in the assessment. Particular care must be taken where a matter was initially assessed as being misconduct and consideration is being given to reassess the matter as gross misconduct. This will generally only be appropriate where significant new evidence has emerged since the original assessment.

2.127. The same principle applies where the initial assessment suggests that the matter is one of misconduct or gross misconduct but subsequent investigation reveals that it is not, and may be, for example, one of unsatisfactory performance. In such cases the police officer will be informed that the matter is now not being considered as a matter of misconduct.

2.128. An assessment of conduct should operate in the interests of all parties and be demonstrably proportionate and fair. It is in the interests of officers, complainants and in the wider public interest that a fair and equitable assessment is made which provides the best opportunity to properly ascertain facts and assist the appropriate authority as to whether there is a case to answer. Assessments of conduct which are unnecessarily severe serve only to undermine an investigation, or increase any perception of unfairness on the part of an officer subject of investigation. Conversely, assessments of conduct which are unduly lenient do not serve the interests of justice and may prevent an officer who deserves to be dismissed from being properly held to account.

Dealing with misconduct

2.129. Unless there are good reasons to take no action, there are two ways by which line managers can deal with matters which have been assessed as potential misconduct:

a. Management action

b. Disciplinary action for misconduct – where it is felt that the matter should be investigated

2.130. A decision on which action will be appropriate will be made on the basis of the information available following the severity assessment.

Management action

2.131. The purpose of management action is to:

a. Deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public.

b. Identify any underlying causes or welfare considerations.

c. Improve conduct and to prevent a similar situation arising in the future.

2.132. When appropriate, managers in the police service are expected and encouraged to intervene at the earliest opportunity to prevent misconduct occurring and to deal with cases of misconduct in a proportionate and timely way through management action. Even if the police officer does not agree to the management action it can still be imposed by the manager providing such action is reasonable and proportionate.

2.133. Management action may include:

a. Pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour.

b. Identifying expectations for future conduct.

c. Establishing an improvement plan.

d. Addressing any underlying causes of misconduct.

2.134. The police officer may in some cases be advised that any future misconduct even if it is of the same type, could be dealt with by disciplinary action rather than management action.

2.135. The manager may draft an improvement plan with the police officer. This should include timescales for improvement in the conduct. A written record should be made of any improvement action and placed on the police officer's PDR or equivalent. Any such note should be agreed as an accurate record with the police officer concerned and copied to him or her. Where the police officer does not agree with the record then his or her comments will be recorded and kept with the record. Managers should ensure that any improvement plan recorded on the police officer's PDR (or equivalent) is regularly reviewed and comment made as to the improvement or otherwise of the police officer.

2.136. Management action is not a disciplinary outcome but is considered to be part of the normal managerial responsibility of managers in the police service. Management action is always available, including during or after the process of resolving a complaint using Local Resolution. Management action does not have to be revealed to the CPS as it does not constitute a disciplinary outcome.

2.137. Where an appropriate manager decides at the severity assessment that management action is the most appropriate and proportionate way to deal with an issue of misconduct, there will be no requirement to conduct a formal investigation and therefore no requirement to give a written notice to the police officer concerned in accordance with the provisions in the Conduct Regulations. Where at a later stage, either following the investigation or on withdrawal of the case (under regulation 20 of the Conduct Regulations or Regulation 10 of the Complaint Regulations), an appropriate manager decides to take management action, written notice of this will be given to the police officer as soon as possible.

2.138. Management action is not to be confused with management advice. Management advice is a disciplinary outcome that can only be imposed following a misconduct meeting or hearing.

<u>Taking further disciplinary proceedings</u>

2.139. Where it is felt that management action is not appropriate to deal with the alleged breach of the Standards of Professional Behaviour then an investigation into the alleged misconduct may be necessary. Where in cases of potential misconduct, management action is not considered appropriate, there will be an investigation under the Conduct Regulations and in cases where the allegation amounts to one of gross misconduct, then the matter will always be investigated.

2.140. The purpose of taking further disciplinary proceedings is to:

a. Establish the facts underlying the allegation.

b. Deal with cases of misconduct in a timely, proportionate, fair and effective way such as will command the confidence of the police service and the public.

c. Identify any underlying causes or welfare considerations.

d. Identify any learning opportunities for the individual or the organisation.

2.141. The guidance set out above deals with the requirements for severity assessments to be conducted in cases to which the 2002 Act applies and those cases dealt with under the Conduct Regulations.

2.142. The following provisions apply to both types of cases with the requirements set out in either the Complaint Regulations for cases being dealt with under the 2002 Act or the Conduct Regulations for other cases. Once cases have been referred to misconduct proceedings, in all cases, the relevant regulations are the Conduct Regulations (Regulation 19 onwards).

Written notification to officer concerned

2.143. Written notification will be given to the police officer concerned by the investigator appointed to investigate the case, advising him or her that his or her conduct is under investigation – either under Regulation 15 of the Conduct Regulations or under Regulation 16 of the Complaint Regulations (in the case of complaints subject to special requirements (see paragraph 2.86) and recordable conduct investigations). A standard notice template is found at Annex E The notice will:

a. Inform the police officer that there is to be an investigation of his or her potential breach of the Standards of Professional Behaviour and inform the police officer of the name of the investigator who will investigate the matter.

b. Describe the conduct that is the subject of the investigation and how that conduct is alleged to have fallen below the Standards of Professional Behaviour.

c. Inform the police officer concerned of the appropriate authority's (or investigator's in a matter dealt with under the 2002 Act) assessment of whether the conduct alleged, if proved, would amount to misconduct or gross misconduct.

d. Inform the police officer of whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or misconduct hearing.

e. Inform the police officer that if the likely form of any misconduct proceedings changes the police officer will be notified of this together with the reasons for that change.

f. Inform the police officer of his or her right to seek advice from his or her staff association or any other body and who the police officer may choose to act as his or her police friend.

g. Inform the police officer that if his or her case is referred to a misconduct hearing or special case hearing, he or she has the right to be legally represented by a relevant lawyer. If the police officer elects not to be so represented then he or she may be represented by a police friend. The notice will also make clear that if he or she elects not to be legally represented then he or she may be dismissed or receive any other disciplinary outcome without being so represented.

h. Inform the police officer that he or she may provide, within 10 working days of receipt of the notice (unless this period is extended by the investigator) a written or oral statement relating to any matter under investigation and he or she (or his or her police friend) may provide any relevant documents to the investigator within this time.

i. Inform the police officer that whilst he or she does not have to say anything, it may harm his or her case if he or she does not mention when interviewed or when providing any information within the relevant time limits something which he or she later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or Police Appeals Tribunal.

2.144. The notice should clearly describe in unambiguous language the particulars of the conduct that it is alleged fell below the standards expected of a police officer.

2.145. The terms of reference for the investigation, or the part of the terms of reference for the investigation relating to the individual's conduct, should, subject to there being no prejudice to that or any other investigation, be supplied to the police officer and to his or her police friend on request, and they should both be informed if the terms of reference change.

2.146. The written notification may be provided to a manager (including by e mail) to give to the police officer concerned or where appropriate and with the agreement of the police friend the notice may be given to the police friend to give to the police officer concerned. In both cases the notice must be given to the police officer in person. Alternatively, the notice can be posted by recorded delivery to his or her last known address. The responsibility for ensuring that the notice is served rests with the investigator (in cases dealt with under the 2002 Act) or the appropriate authority. (In both cases it is the investigator who must cause the officer concerned to be given the written notice. Therefore whilst the appropriate authority may do it, the responsibility for ensuring that the notice is served rests with the investigator).

2.147. The investigator should ensure that the police officer subject to investigation shall, as soon as practicable, be provided with this written notification unless to do so would prejudice the investigation or any other investigation (including a criminal one). Any decision not to inform the police officer will be recorded and kept under regular review in order to avoid unreasonable delay in notifying the police officer concerned.

2.148. Where the IPCC is conducting an independent or managed investigation then the responsibility for ensuring that the police officer is provided with the written notification (as soon as practicable) rests with the investigator appointed or designated to conduct that investigation.

2.149. In the interests of fairness, care must be taken when an incident is being investigated to ensure that the notification is given to the police officer as soon as practicable after an investigator is appointed (subject to any prejudice to that or any other investigation).

Appointment of investigator

2.150. Where the appropriate authority has assessed the allegation as being one of misconduct or gross misconduct and in the case of misconduct, has determined that the matter is not suitable for immediate management action then the appropriate authority will appoint an investigator. In cases being dealt with

under the Conduct Regulations the investigator can be a police officer, police staff member or some other person and should be the most appropriate person having regard to all of the circumstances and the requirements set out in regulation 13 of the Conduct Regulations.

2.151. In cases falling under paragraphs 17 or 18 of Schedule 3 to the 2002 Act the appropriate authority must follow the appropriate provisions regarding the approval of the investigator by the IPCC. The appropriate authority will also need to ensure that an investigator appointed under paragraphs 16, 17 or 18 of Schedule 3 to the 2002 Act has the necessary skills and experience as set out in regulation 24 of the Complaint Regulations (See IPCC statutory guidance). Cases falling under paragraph 19 of Schedule 3 shall be investigated by the Commission's own staff subject to the Secretary of State having the power to nominate that person in the circumstances set out in paragraph 19(3) and (3A) of that Schedule.

2.152. The force Professional Standards Department should be consulted before an investigation is commenced to ensure that there are no other matters that need to be considered prior to any investigation (for example other investigations that may be ongoing into the conduct of the police officer concerned, or outstanding written warnings that are still live).

Investigation

2.153. The purpose of an investigation is to:

a. Gather evidence to establish the facts and circumstances of the alleged misconduct.

b. Assist the appropriate authority to establish on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct or that there is no case to answer.

c. Identify any learning for the individual or the organisation.

2.154. In cases which are not being managed or dealt with by the IPCC, the appropriate authority should ensure that a proportionate and balanced investigation is carried out as soon as possible after any alleged misconduct comes to the appropriate authority's attention and that the investigation is carried out as quickly as possible allowing for the complexity of the case. A frequent criticism of misconduct investigations at one time was that they were lengthy, disproportionate and not always focussed on the relevant issue(s).It is therefore crucial that any investigation is kept proportionate to ensure that an overly lengthy investigation does not lead to grounds for challenge. Where the investigation identifies that the issue is one of performance rather than misconduct, the police officer should be informed as soon as possible that the matter is now being treated as an issue of performance.

2.155. In cases which do not fall under the 2002 Act, the appropriate authority can discontinue an investigation if there is a change in circumstances which makes it appropriate to do so. Similarly, in cases which do fall under the 2002 Act, the appropriate authority can apply to the IPCC to discontinue an investigation (see paragraph 21 of Schedule 3 to the 2002 Act, regulation 10 of the Complaint Regulations and the IPCC statutory guidance).

2.156. The investigator must ensure that the police officer is kept informed of the progress of the investigation. It is also good practice to keep the police friend informed of progress at the same time. The investigator is required to notify the police officer of the progress of the investigation at least every 4 weeks from the start of the investigation. The requirement under the 2002 Act to keep the complainant or an interested person informed will also apply in relevant cases (See Regulation 12 of the Complaint Regulations and the IPCC Statutory Guidance).

2.157. The police officer or his or her police friend, acting on the police officer concerned's instructions, is encouraged to suggest at an early stage any line of enquiry that would assist the

investigation and to pass to the investigator any material they consider relevant to the enquiry. (See regulation 16 of the Conduct Regulations and paragraph 19C of Schedule 3 to the 2002 Act and Regulation 18 of the Complaint Regulations).

2.158. The investigator (under the Conduct Regulations or the 2002 Act) has a duty to consider the suggestions submitted to him or her. The investigator should consider and document reasons for following or not following any submissions made by the police officer or his or her police friend with a view to ensuring that the investigation is as fair as possible. The suggestions may involve a further suggested line of investigation or further examination of a particular witness. The purpose is to enable a fair and balanced investigation report to be prepared and where appropriate made available for consideration at a misconduct meeting/hearing and to negate the need (except where necessary) for witnesses to attend a meeting/hearing.

Interviews during investigation

2.159. It will not always be necessary to conduct a formal interview with the police officer subject to the investigation. In some cases, particularly involving low level misconduct cases, it may be more appropriate, proportionate and timely to request a written account from the police officer.

2.160. Where a formal interview is felt to be necessary, the investigator should try and agree a time and date for the interview with the police officer concerned and his or her police friend if appropriate. The police officer will be given written notice of the date, time and place of the interview. The police officer must attend the interview when required to do so and it may be a further misconduct matter to fail to attend.

2.161. If the police officer concerned or his or her police friend is not available at the date or time specified by the investigator, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the investigator the interview must be postponed to that time.

2.162. Where a police officer is on certificated sick leave, the investigator should seek to establish when the police officer will be fit for interview. It may be that the police officer is not fit for ordinary police duty but is perfectly capable of being interviewed. Alternatively the police officer concerned may be invited to provide a written response to the allegations within a specified period and may be sent the questions that the investigator wishes to be answered.

2.163. It is important that there is a balance between the welfare of the police officer concerned and the need for the investigation to progress as quickly as possible in the interests of justice, the police service and the police officer subject to investigation.

2.164. Where a police officer is alleged or appears to have committed a criminal offence a normal criminal investigation will take place, with the police officer being cautioned in accordance with the PACE Code of Practice. Where the matter to be investigated involves both criminal and misconduct allegations, it should be made clear to the police officer concerned at the start of the interview whether he or she is being interviewed in respect of the criminal or misconduct allegations.

2.165. This may be achieved by conducting two separate interviews, although this does not prevent the responses given in respect of the criminal interview being used in the misconduct investigation and therefore a separate misconduct interview may not be required.

2.166. Care should be taken when conducting a misconduct interview where the police officer is also subject of a criminal investigation in respect of the same behaviour, as anything said by the police officer concerned in the misconduct interview when not under caution and used in the criminal investigation

could be subject to an inadmissibility ruling by the court at any subsequent trial. If necessary, appropriate legal advice should be obtained.

2.167. At the beginning of a misconduct interview or when asking a police officer to provide a written response to an allegation, the police officer shall be reminded of the warning contained in regulation 15(1)(h) of the Conduct Regulations (or regulation 16(1)(h) of the Complaint Regulations for cases dealt with under the 2002 Act) namely informing the police officer that whilst he or she does not have to say anything it may harm his or her case if he or she does not mention when interviewed or providing a written response something which he or she later relies on in any misconduct proceedings or special case hearing or appeal meeting or appeal hearing.

2.168. Prior to an interview with a police officer who is the subject of a misconduct investigation, the investigator must ensure that the police officer is provided with sufficient information and time to prepare for the interview. The information provided should always include full details of the allegations made against the police officer including the relevant date(s) and place(s) of the alleged misconduct (if known). The investigator should consider whether there are good reasons for withholding certain evidence obtained prior to the interview and if there are no such reasons then the police officer should normally be provided with all the relevant evidence obtained. The police officer will then have the opportunity to provide his or her version of the events together with any supporting evidence he or she may wish to provide. The police officer will be reminded that failure to provide any account or response to any questions at this stage of the investigation may lead to an adverse inference being drawn at a later stage.

2.169. Interviews do not have to be electronically recorded but if they are then the person being interviewed shall be given a copy upon request. If the interview is not electronically recorded then a written record or summary of the discussion must be given to the person being interviewed. The police officer concerned should be given the opportunity to check and sign that he or she agrees with the summary as an accurate record of what was said and should sign and return a copy to the investigator. Where a police officer refuses or fails to exercise his or her right to agree and sign a copy then this will be noted by the investigator. The police officer may make a note of the changes he or she wants to make to the record and a copy of this will be given to the person(s) conducting the hearing/meeting along with the investigator's account of the record.

2.170. Other than for a joint criminal/misconduct investigation interview it will not be necessary for criminal style witness statements to be taken. In misconduct investigations an agreed and signed written record of the information supplied will be sufficient.

Moving between Misconduct and UPP

2.171. It may not be apparent at the outset of an investigation whether the matter is one of misconduct or unsatisfactory performance or attendance. It should be established as soon as possible which procedure is the more appropriate. In some cases it may be that it is not clear which procedure should be used until there has been some investigation of the matter.

2.172. Assessing a matter as misconduct or a matter of performance or attendance is an important distinction to make. It is normally possible to distinguish between matters of unsatisfactory performance or attendance by a particular police officer and that of personal misconduct.

2.173. A matter that appears initially to relate to misconduct may, on investigation, turn out to be a matter relating to unsatisfactory performance or attendance and should be transferred to the unsatisfactory performance procedure (UPP), if appropriate, at the earliest opportunity. This can be done at any time before a misconduct meeting or hearing, in relation to a matter not dealt with under the 2002 Act, by withdrawing the case against the police officer concerned under regulation 20 of the Conduct

Regulations and referring the matter to be dealt with under the UPPs. The police officer concerned shall be informed that the matter is no longer being investigated as a misconduct case.

2.174. It may be that the outcome of an investigation into an allegation is that an issue of unsatisfactory performance or attendance has been identified against one or more police officers who were the subject of the investigation rather than any issue of misconduct. In such cases the outcome of the allegation may be that the appropriate authority will determine that there is no case to answer in respect of misconduct or gross misconduct but it may be appropriate to take action under the UPPs in order that the police officer concerned may learn and improve his or her performance.

2.175. There may be very rare occasions when the matter proceeds under the misconduct procedure to a misconduct meeting or hearing and the person(s) conducting the proceedings find that the conduct of the police officer amounts to unsatisfactory performance or attendance as opposed to one of misconduct. In such cases, a finding on the facts of the case by the person(s) conducting the meeting or hearing can be used for the purposes of the UPPs. The person(s) conducting the meeting/hearing should in such cases make a finding that the conduct did not amount to misconduct and refer the matter to the appropriate authority.

2.176. The appropriate authority in such cases should then decide if taking action against the police officer concerned using the UPPs is a fair and reasonable exercise of discretion taking into account all of the circumstances of the case and in particular the same principles set out at paragraphs 2.76 and 2.77.

2.177. Material gathered under the UPP should not be used for the purposes of the misconduct procedure if this means that the safeguards for police officers provided in the misconduct procedure, such as provision for formal notification, are thereby undermined.

Investigation report and supporting documents

2.178. At the conclusion of the investigation the investigator must as soon as practicable submit his or her report of the investigation. The report should be structured so that it sets out an accurate summary of the evidence that has been gathered (regulation 18 of the Conduct Regulations or regulation 20 of the Complaint Regulations) and attaches or refers to any relevant documents. Finally it will indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer. This opinion and any other statement of opinion or other irrelevant prejudicial material will be removed from the report before the report is provided to the person(s) hearing the case at a misconduct meeting or hearing (if the matter is referred to proceedings).

2.179. In cases where the investigation was conducted under paragraphs, 16 (local), 17 (supervised), 18 (managed) or 19 (independent) of Schedule 3 to the 2002 Act then the investigator will submit his or her report with recommendations in accordance with paragraph 22 of schedule 3 to the 2002 Act.

2.180. The appropriate authority shall make a decision based on the report. The appropriate authority shall determine whether there is a case to answer in respect of misconduct or gross misconduct or that there is no case of misconduct to answer (regulation 19 of the Conduct Regulations).

2.181. If it is decided that there is no case of misconduct to answer then management action may still be appropriate. In matters involving a complaint, where the complaint was subject to a local or supervised investigation under the 2002 Act, the decision of the appropriate authority may be subject to an appeal by the complainant (see IPCC Statutory Guidance). Similarly in cases where an investigation into a complaint, recordable conduct matter or death or serious injury matter has been conducted under paragraph 18 (managed) or 19 (independent) of Schedule 3 to the 2002 Act, the IPCC has the power to make recommendations and give directions as to whether there is a case to answer.

2.182. If no further action is to be taken then it is good practice that the investigation report or part of the investigation report that is relevant to the police officer should be given, subject to the harm test, to the police officer on request.

2.183. The investigation report will also highlight any learning opportunities for either an individual or the organisation.

Action prior to misconduct meetings/hearings

2.184. In cases where it is decided that there is a misconduct case to answer, the appropriate authority will need to determine whether the matter can be dealt with by means of immediate management action without the need to refer the case to a misconduct meeting. This will be particularly appropriate in cases where the police officer concerned has accepted that his or her conduct fell below the standards expected of a police officer and demonstrates a commitment to improve his or her conduct in the future and to learn from that particular case. In addition the appropriate authority will need to be satisfied that this is the case and that management action is an adequate and sufficient outcome having regard to all the circumstances of the case.

2.185. Where the appropriate authority consider that there is a case to answer in respect of misconduct and that management action would not be appropriate because the case to answer is considered serious enough that if proven or admitted it would justify at least a written warning being given then a misconduct meeting/hearing should be arranged. The police officer shall, subject to the harm test, be given a copy of the investigation report (or the part of the report which is relevant to him or her), any other relevant documents gathered during the course of the investigation and a copy of his or her statement to the investigator. These documents should be supplied to the officer as soon as possible after the decision has been made to refer the matter to a meeting or a hearing.

2.186. In determining which documents are relevant, the test to be applied will be that under the Criminal Procedure and Investigations Act 1996, namely whether any document or other material undermines the case against the police officer concerned or would assist the police officer's case.

2.187. Where a determination has been made that the conduct amounts to gross misconduct then the case shall be referred to a misconduct hearing (or special case hearing if appropriate).

2.188. The appropriate authority will also provide the police officer with a notice containing the matters discussed at regulation 21(1)(a) of the Conduct Regulations, including the particulars of the behaviour that is alleged to have fallen below the standards in the Standards of Professional Behaviour.

2.189. It is necessary to describe the particulars of the actual behaviour of the police officer that is considered to amount to misconduct or gross misconduct and the reasons it is thought the behaviour amounts to such.

2.190. It is important to note that in cases where the misconduct to be considered was identified as a direct result of a complaint, then any decision by the appropriate authority to hold or not to hold a particular misconduct proceeding may be subject to an appeal by the complainant. The appropriate authority, having made its decision on the outcome of the investigation into the complaint and whether there is a case to answer in respect of misconduct or gross misconduct will notify the complainant of its determination and inform the complainant of their right of appeal. The police officer subject to the investigation into his or her conduct should be informed of the determination of the appropriate authority but also informed that the appropriate authority's decision could be subject of an appeal by the complainant (see IPCC statutory guidance). The appropriate authority should then wait until either the 28

+ 2 days[1] period that the complainant may appeal has elapsed or an appeal has been received and decided by the IPCC before serving the written notice described in paragraph 2.188 confirming how the proceedings are to be dealt with.

2.191. There is no requirement to wait until the period the complainant has to appeal has elapsed in cases where the appropriate authority has determined that the case should be dealt with at a misconduct hearing or a special case hearing.

2.192. No final decision can be taken by the appropriate authority in the case of a recordable conduct matter where the IPCC are considering whether to recommend or direct that an appropriate authority take particular misconduct proceedings unless the appropriate authority intends to refer the matter to a misconduct hearing or special case hearing. Therefore, the written notice should not be provided until the appropriate authority has heard from the IPCC.

2.193. Within 14 working days (unless this period is extended by the person(s) conducting the misconduct meeting/hearing for exceptional circumstances) beginning with the first working day after being supplied with the investigator's report and relevant documents and written notice described in paragraph 2.148, the police officer will be required to submit in writing: -

a. whether or not he or she accepts that the behaviour described in the particulars amounts to misconduct or gross misconduct as the case may be

b. where he or she accepts that his or her conduct amounts to misconduct or gross misconduct as the case may be, any written submission he or she wishes to make in mitigation

c. where he or she does not accept that his or her conduct amounts to misconduct or gross misconduct as the case may be, or he or she disputes part of the case, written notice of the particulars of the allegation(s) he or she disputes and his or her account of the relevant events and any arguments on points of law he or she wishes the person(s) conducting the meeting or hearing to consider.

2.194. The police officer concerned will also (within the same time limit) provide the appropriate authority and the person(s) conducting the misconduct meeting or hearing with a copy of any document he or she intends to rely on at the misconduct proceedings. If such documents involve submissions on points of law then the person(s) conducting or chairing a meeting/hearing may take legal advice in advance of the meeting/hearing. In addition, at a misconduct hearing the persons conducting that hearing have the right to have a relevant lawyer available to them for advice at the hearing.

2.195. The police officer shall be informed of the name of the person(s) holding the meeting/hearing together with the name of any person appointed to advise the person(s) conducting the meeting/hearing as soon as reasonably practicable after they have been appointed. The police officer may object to any person hearing or advising at a misconduct meeting or hearing within 3 working days starting with the first working day after he or she was notified of the person's name. In doing so the police officer concerned will need to set out clear and reasonable objections as to why a particular person(s) should not conduct or advise at the meeting/hearing.

2.196. If the police officer concerned submits a compelling reason why such a person should not be involved in the meeting/hearing, a replacement should be found and the police officer will be notified of

[1] The statutory period for a complainant to appeal is 28 days commencing on the day after the date of the letter giving notification of the decision of the appropriate authority. However, 2 extra days are provided for the IPCC to process and inform the appropriate authority that an appeal has been received.

the name of the replacement and the police officer concerned will have the same right to object to that person.

2.197. The police officer concerned may object to a person(s) conducting a misconduct meeting or hearing or advising at such proceedings if, for example, the person(s) have been involved in the case in a way that would make it difficult to make an objective and impartial assessment of the facts of the case.

Documents for the meeting/hearing

2.198. The person(s) conducting the misconduct meeting/hearing shall be supplied (in accordance with regulation 27) with: -

a. A copy of the notice supplied to the police officer that set out the fact that the case was to be referred to a misconduct meeting/hearing and details of the alleged misconduct etc.

b. A copy of the investigator's report or such parts of the report that relate to the police officer concerned, any other relevant document gathered during the course of the investigation and a copy of any statement made by the officer. The appropriate authority must ensure that the investigator's report and other relevant documents do not contain inadmissible material of the type described in paragraph 2.178.

c. The notice provided by the police officer setting out whether or not the police officer accepts that his or her conduct amounts to misconduct or gross misconduct, any submission he or she wishes to make in mitigation where the conduct is accepted, and where he or she does not accept that the alleged conduct amounts to misconduct or gross misconduct or he or she disputes part of the case, the allegations he or she disputes and his or her account of the relevant events; any arguments on points of law submitted by the police officer concerned as well as any documents he intends to rely on at the meeting/hearing, submitted under regulation 22 of the Conduct Regulations.

d. Where the police officer concerned does not accept that the alleged conduct amounts to misconduct or gross misconduct as the case may be or where he or she disputes any part of the case, any other relevant documents that in the opinion of the appropriate authority should be considered at the meeting/hearing.

e. Any other documents that the person(s) conducting the meeting/hearing request that are relevant to the case.

2.199. The documents for the meeting/hearing should not be given to the person(s) appointed to conduct the meeting/hearing until the time has lapsed for the officer concerned to object to the person(s) conducting the proceedings and only after the officer has responded in accordance with his or her obligation under Regulation 22. The complete documents including any response from the officer (as set out in Regulation 22) should then be given to the person(s) conducting the proceedings at the same time as the officer concerned is given any documents that he or she has not already received.

Witnesses

2.200. A witness will only be required to attend a misconduct meeting/hearing if the person conducting or chairing the meeting/hearing reasonably believes his or her attendance is necessary to resolve disputed issues in that case. Where there is a witness whose evidence is in dispute and who is material to the allegation then such witnesses should be made available to attend. The appropriate authority should meet the reasonable expenses of any witnesses.

2.201. The appropriate authority and the officer concerned shall inform each other of any witnesses they wish to attend including brief details of the evidence that person can provide. They should attempt to agree which witness(es) are necessary to deal with the issue(s) in dispute.

2.202. The appropriate authority shall supply the person(s) conducting the proceedings with a list of the witnesses agreed between the parties or where there is no agreement, the lists provided by both the officer and the appropriate authority. The person conducting a misconduct meeting or the chair of a misconduct hearing will decide whether to allow such witnesses. The person conducting or chairing the misconduct proceedings may also decide that a witness other than one on such lists should be required to attend (if their attendance is considered necessary).

2.203. Where the person conducting a misconduct meeting or the chair of a misconduct hearing rejects the request for a particular witness(es) to attend it is good practice for the reasons for refusing to allow the attendance of the witness(es) to be given to the police officer concerned and the appropriate authority.

2.204. Whilst the person conducting the misconduct meeting or the chair of a misconduct hearing will decide whether a particular witness(es) are required, the appropriate authority will be responsible for arranging the attendance of any witness.

2.205. In special cases (fast track) no witnesses, other than the officer concerned, will provide evidence at the hearing. (See Annex A)

Misconduct meetings/hearings

2.206. There are two types of misconduct proceedings:

A *Misconduct Meeting* for cases where there is a case to answer in respect of misconduct and where the maximum outcome would be a final written warning.

A *Misconduct Hearing* for cases where there is a case to answer in respect of gross misconduct or where the police officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. The maximum outcome at this hearing would be dismissal from the police service without notice.

2.207. It is important that misconduct hearings are only used for those matters where the police officer has a live final written warning and has potentially committed a further act of misconduct that warrants misconduct proceedings or the misconduct alleged is so serious that, if the conduct alleged was proven or admitted, dismissal would be justified having regard to all the circumstances of the case. (See paragraph 2.117)

Timing for holding meetings/hearings

2.208. A misconduct meeting shall take place not later than 20 working days beginning with the first working day after the date on which the documents and material for the meeting have been supplied to the police officer under regulation 21 of the Conduct Regulations. Misconduct hearings shall take place not later than 30 working days beginning with the first working day after the date the documents for the hearing have been supplied to the police officer concerned. Documents for the meeting/hearing should be served on the officer as soon as possible after the decision has been taken to refer the matter to misconduct proceedings.

2.209. The time limit for holding a misconduct meeting or a misconduct hearing can be extended if in the interests of justice the person conducting or chairing the misconduct proceedings considers it appropriate to extend beyond that period. Any decision to extend or not to extend the time limit for a

meeting/hearing and the reasons for it will be documented by that person and communicated to the appropriate authority and the police officer concerned. It is also good practice to inform the police friend of the police officer concerned (if applicable).

2.210. In order to maintain confidence in the misconduct procedures it is important that the misconduct meetings/hearings are held as soon as practicable and extensions to the timescales should be an exception rather than the rule. To that end, managers appointed to conduct or chair misconduct meetings/hearings are to ensure that a robust stance is taken in managing the process whilst ensuring the fairness of the proceedings. Extensions may be appropriate for example if the case is particularly complex. It will not normally be considered appropriate to extend the timescale on the grounds that the police officer concerned wishes to be represented by a particular lawyer.

Purpose of misconduct meeting/hearing

2.211. The purpose of a formal misconduct meeting/hearing is to:

a. Give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents and to put forward any factors the police officer wishes to be considered in mitigation (in addition to the submission which must be sent in advance to the person(s) conducting or chairing the meeting/hearing for his, her or their consideration).

b. Decide if the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour based on the balance of probabilities and having regard to all of the evidence and circumstances.

c. Consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any live written warnings or final written warnings (and any previous disciplinary outcomes that have not expired[2]) and any early admission of the conduct by the police officer.

Person(s) appointed to hold misconduct meetings/hearings

Misconduct meeting - Non senior officers (regulation 25)

2.212. A misconduct meeting for non senior officers (police officers up to and including the rank of Chief Superintendent and all special constables) will be heard by:

a. a police officer (or other member of a police force) of at least one rank above the police officer concerned. However, in the case of a special constable, the member of the police force must be a sergeant or above or a senior human resources professional; or

b. a police staff member who, in the opinion of the appropriate authority, is a grade above that of the police officer concerned. A police staff manager must not be appointed to conduct a misconduct meeting if the case substantially involves operational policing matters.

2.213. An appropriate manager (whether a police officer or police staff manager) may also be appointed as an adviser to the person appointed to hold the meeting if the appropriate authority considers it appropriate in the circumstances. The adviser's role is solely to advise on the procedure to be adopted and not as a decision maker. The manager appointed to conduct the meeting and (where appropriate) the

[2] See Regulation 15 of The Police Regulations 2003 (SI 2003 No.527)

adviser must be sufficiently independent in relation to the matter concerned (for example without any previous involvement in the matter) as to avoid any suggestion of unfairness.

Misconduct hearing - Non senior officers

2.214. Misconduct hearings for non-senior police officers are conducted by an independent legally qualified chair (LQC). The panel must also consist of two other members:

- an independent member i.e. a lay person who is not a police officer and is selected from a list kept by the local policing body; and
- a police officer of the rank of superintendent or above (providing that the officer is at least one rank above the person subject to the misconduct hearing).

2.215. The appropriate authority is responsible for appointing all three panel members. The LQC must be chosen from a list of candidates which is selected and maintained by the local policing body through the process described in Annex F. The appropriate authority should select the LQC at the earliest opportunity following the decision to refer to misconduct proceedings. In accordance with procedural fairness and principles of natural justice, the selection of the LQC should be on a fair and transparent basis. Good practice will be selection through a rota system by which the next available LQC is selected for the next hearing. Bad practice will be to select on the basis of which LQC will be more likely to give the verdict required. The manner of selection should be made clear to all parties to the hearing.

The Administration and Management of the Hearing

2.216. The division of roles between the LQC and the appropriate authority should be made clear at the appointment of the LQC to the hearing. Good practice will be to set out the role of the LQC in a letter inviting them to chair the hearing. The appropriate authority is responsible for the administration of the hearing and the LQC of the hearing will be responsible for managing the hearing. The appropriate authority should ensure that the LQC is provided with the information and documents that they need to manage the case at the earliest opportunity following the agreement of their appointment by the officer concerned. This includes: the list of witnesses, as described in paragraph 2.200, as soon as practicable after their agreement: a copy of the investigators report and documents given to and provided by the officer, at the earliest opportunity.

Misconduct meetings/hearings - Senior officers (regulation 26)

2.217. The persons who will hear misconduct meetings/hearings for senior officers are set out at Annex B.

Misconduct and Special Case Hearings that are held in public

2.218. Paragraphs 2.220 to 2.247 apply to misconduct hearings and special case hearings (including further hearings) in cases where an officer is given notice of referral to misconduct proceedings under regulation 21(1) or 43(1) of the Conduct Regulations on or after 1 May 2015. It does not apply to misconduct meetings or third stage unsatisfactory performance meetings.

2.219. The Conduct Regulations are clear that such a misconduct hearing or special case hearing will be held in public, subject to the discretion of the person chairing or conducting the hearing to exclude any person from all or part of the hearing.

Consideration of whether to exclude any person from all or part of a hearing

2.220. In assessing whether any person should be excluded from a hearing or any part of a hearing, the person chairing or conducting the hearing may take into account a variety of factors. These may include but are not limited to those factors listed at (a)-(j) below.

a. The transparency of the police misconduct and/or complaints system;
b. The wider public interest[3] in the proceedings;
c. The vulnerability, physical and mental health and/or the welfare of witnesses who may be called to give evidence at the hearing;
d. Where a misconduct hearing is being held as a result of a public complaint; the vulnerability, physical and mental health and/or the welfare of the complainant(s);
e. The physical and mental health and/or welfare of the officer(s) subject to the misconduct hearing;
f. The welfare of any third party not listed above, i.e. a victim that is not a complainant or witness;
g. Any factors relating to sensitive police operations that may not be appropriate for public disclosure, including where there would be a risk of the identification of covert human intelligence sources, confidential informants or covert police assets;
h. Whether holding a hearing in public would jeopardise or interfere with any criminal proceedings;
i. Whether holding the hearing in public would interfere with the prevention or detection of crime or the apprehension of offenders;
j. Any relevant national security issues.

2.221. Having taken into account any of the factors listed at (a)-(j), any representations that have been made and any other factors they consider relevant, the person chairing or conducting the hearing should consider whether the particular circumstances of the case outweigh the public interest in holding the hearing in public. Effort should be made to ensure as much of a hearing is held in public as possible.

2.222. Where a witness is unwilling to give evidence in public, the use of screens or other measures to ensure anonymity should be considered where appropriate.

2.223. The presumption should be of transparency where possible. A hearing should not be held privately or notice withheld for administrative reasons; or because of concerns to the reputation of the force or police arising from the hearing being public.

<u>Conditions imposed on attendance in order to facilitate the proper conduct of proceedings</u>

2.224. The hearing should not be delayed solely in order to facilitate a complainant, interested person, or any other member of the public attending the hearing, although consideration will need to be given to whether a complainant or interested person is also a witness in the matter under consideration.

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[3] Public interest means the wider public interest in, for example, seeing justice done, understanding the police disciplinary system, upholding the integrity of the police etc. rather than the interest of the public in the case.

2.225. Members of the public attending a hearing are expected to do so at their own expense, except where they are attending as a witness. The appropriate authority should meet the reasonable expenses of any witnesses.

2.226. It will normally be appropriate for the person chairing or conducting the hearing to prohibit the taking of photographs and the use of film or sound recording equipment during the hearing, except for official use. The use of live, text-based communications for the purposes of simultaneous reporting of proceedings may be permitted if the person chairing or conducting the proceedings is satisfied that it does not interfere with the orderly conduct of proceedings.

2.227. At the discretion of the person chairing or conducting the proceedings, a hearing can be live streamed by the appropriate authority to a facility accessible to the public as an alternative to in person attendance where it would otherwise not be possible to allow public access to the hearing room or to allow for more people to view the hearing than can be accommodated.

2.228. In the case that more people wish to attend the hearing than can be accommodated, priority should be given to the complainant, any interested person, and, where appropriate, anyone acting as an observer on behalf of the IPCC.

2.229. The person chairing or conducting a hearing may also decide to impose other conditions in advance of, or during, a hearing. Conditions can include but are not limited to:

a. Requirements for members of the public to register and/or produce valid identification;
b. Restrictions on what can be brought into the hearing room or on to the premises where the hearing is to be held, whether for the purposes of security or otherwise;
c. Restrictions on the number of people that can be accommodated and the procedure where more people wish to attend a hearing than can be accommodated;
d. Any restrictions on reporting that members of the public or the media must adhere to in order to be granted access to the hearing.

2.230. The rational for the imposition of any condition(s) on attendance should be explained in the notice given to the public or, where a decision is made at the hearing itself, orally by the chair or person conducting the hearing. Where information is required from members of the public as a condition of attendance, the notice should explain how this data will be used and processed i.e. in accordance with the Data Protection Act 1998.

Public notice of the hearing and representations to the person chairing or conducting a misconduct hearing regarding public attendance

2.231. Regulations 27A and 44A provide that the person chairing or conducting a misconduct or special case hearing may require the appropriate authority to give public notice of a hearing. This does not affect any notice in relation to a hearing that should be provided under the Conduct Regulations to the officer concerned, any complainant, interested person, witness or the IPCC.

2.232. The presumption is that a misconduct hearing or a special case hearing should be held in public. There may be some circumstances where this is not appropriate, or where certain parts of the hearing will need to be held in private. There may also be circumstances in which it would not be appropriate for the officer concerned to be named prior to a hearing, or for the allegation to be made public. As such the power of the person chairing or conducting a hearing to require notice to be given to the public is an

enabling power. There is however an expectation that notice will be given where a hearing is to be held wholly or partly in public in the absence of a compelling reason for not doing so.

2.233. There is provision made in the Conduct Regulations for representations to be made in advance to the person chairing or conducting a misconduct or special case hearing by:

a. the officer concerned;
b. the appropriate authority (except where the appropriate authority is conducting the hearing);
c. any complainant(s);
d. any interested person(s);
e. any witnesses; and
f. the Commission (IPCC),

in relation to whether any person should be excluded from the whole or part of a hearing, whether any conditions should be imposed on attendance in order to facilitate the proper conduct of the proceedings and (in the light of those representations) whether the person chairing the hearing should require public notice of the hearing to be given and, if so, the content of such a notice. It is for the person chairing or conducting the hearing to determine the deadline by which any such representations must be made. The appropriate authority should inform any parties listed at (a)-(f) of this deadline.

2.234. The person chairing or conducting the proceedings should consider any representations made prior to the deadline they specify in relation to whether any person should be excluded from the whole or part of a hearing, or whether any conditions should be imposed on attendance in order to facilitate the proper conduct of the proceedings, before deciding whether notice of the hearing should be published, or what the content of any notice should be. This is because the expectation is that notice will be given where a hearing is to be held wholly or partly in public in the absence of a compelling reason for not doing so and therefore consideration should be given to representations on the issue of attendance first and then consideration given to representations on the issue of notice in the light of the former issue.

2.235. Where notice is required, this must be published by the appropriate authority on its website at least 5 working days before the day on which the hearing is due to take place.

2.236. There may be certain circumstances where it would not be appropriate for an officer to be named, for example, a firearms officer where a court has made an anonymity order, or where the officer is an undercover officer and their identity should be protected. Similarly, where the naming of an officer or notice of the subject matter of an investigation could risk the identification of a vulnerable victim or complainant against their wishes, this should be considered by the person chairing or conducting the hearing.

2.237. Notices given to the public should also contain information relating to any conditions that the person chairing or conducting the proceedings has decided to impose on attendance, which have been determined at the point where the notice is required.

2.238. Where a decision is taken in advance to hold all of the hearing in private, then in the interests of transparency the person chairing or conducting the hearing may consider that it would be appropriate to ask the appropriate authority to publish a notice on its website explaining the decision.

<u>Decisions at the hearing itself to exclude any person from all or part of the hearing</u>

2.239. In the interests of efficiency and fairness, it will usually be better for representations to be provided and considered in advance of the hearing wherever possible and this should be encouraged by the person conducting or chairing the hearing. However, the appropriate authority, the officer(s) subject to the hearing, the IPCC, the complainant, any interested person or their representatives may, at the discretion of the person conducting or chairing the hearing, make oral or written representations at the hearing itself, whether or not they have already made written representations in advance of the hearing, in relation to circumstances of the case that in their view should lead to any person being excluded from all

or any part of the proceedings. It may be appropriate for the person chairing or conducting the hearing to direct that the public be excluded whilst any oral representations are heard.

2.240. If, after a hearing has already begun to be held in public, the person chairing or conducting the proceedings reaches a decision to exclude any persons from the proceedings or any part of the proceedings they should announce their decision openly at the hearing with reasons, unless they consider that it would be inappropriate to do so.

2.241. Where the officer concerned requests that any person at the hearing be excluded while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the misconduct proceedings may require those persons to withdraw while the submission is made.

2.242. The decision about whether to allow any person to remain or not whilst submissions are made in mitigation is a decision for the person chairing or conducting the hearing having considered any representations made by the officer either in advance of the hearing or at the hearing itself. If any person has been excluded whilst mitigation is given, the person conducting or chairing the meeting must, subject to the need to keep them excluded for any other reason, invite them back into the hearing for the communication of the finding and the outcome of the proceedings.

2.243. If the person chairing or conducting the hearing decides that the public should be excluded from all or part of the hearing, the person chairing or conducting the hearing should consider whether it would be appropriate in the circumstances to nonetheless allow any complainant(s) and/or any interested person (and person accompanying such a person) to attend or remain in attendance.

2.244. The person conducting the proceedings or the panel may deliberate in private, in the absence of the public and the parties and their representatives, at any time.

2.245. The Chair may exclude from any hearing any person whose behaviour, in their opinion, is likely to disrupt the orderly conduct of the proceedings.

2.246. Under regulation 32 of the Conduct Regulations, where it appears to the person chairing or conducting a hearing that any person may in giving evidence disclose information that, under the harm test, ought not to be disclosed to any person attending the hearing, the person chairing or conducting the hearing must require such attendees to withdraw while the evidence is given.

2.247. Although the conduct Regulations allow for any person to be excluded by the chair, a person acting as an observer on behalf of the Commission should not normally be excluded unless it appears to the chair that there is a compelling reason for doing so.

Joint meetings/hearings

2.248. Cases may arise where two or more police officers are to appear before a misconduct meeting or hearing in relation to apparent failures to meet the standards set out in the Standards of Professional Behaviour stemming from the same incident. In such cases, each police officer may have played a different part and any alleged misconduct may be different for each police officer involved. It will normally be considered necessary to deal with all the matters together in order to disentangle the various strands of action, and therefore a single meeting/hearing will normally be appropriate.

2.249. A police officer may request a separate meeting/hearing if he or she can demonstrate that there would be a real risk of unfairness to that police officer if his or her case was dealt with in a joint meeting/hearing. It is for the person conducting the meeting or the chair of a misconduct hearing to decide if a separate meeting or hearing is appropriate.

2.250. Where a joint meeting/hearing is held it will be the duty of the person(s) conducting the meeting/hearing to consider the case against each police officer and where a breach of the Standards of Professional Behaviour is found or admitted, to deal with each police officer's mitigation and circumstances individually and decide on the outcome accordingly. The person(s) conducting the meeting/hearing have the discretion to exclude the other officer(s) subject of the meeting/hearing if he, she or they determine it appropriate to do so e.g. when hearing the submissions of mitigation by each officer.

Meeting/hearing in absence of officer concerned

2.251. It is in the interests of fairness to ensure that the misconduct meeting/hearing is held as soon as possible. A meeting/hearing may take place if the police officer fails to attend.

2.252. In cases where the police officer is absent (for example through illness or injury) a short delay may be reasonable to allow him or her to attend. If this is not possible or any delay is considered not appropriate in the circumstances then the person(s) conducting the meeting/hearing may allow the police officer to participate by telephone or video link. In these circumstances a police friend will always be permitted to attend the meeting/hearing to represent the police officer in the normal way (and in the case of a misconduct hearing the police officer's legal representative where appointed).

2.253. If a police officer is detained in prison or other institution by order of a court, there is no requirement on the appropriate authority to have the officer concerned produced for the purposes of the misconduct meeting/hearing.

Conduct of misconduct meeting/hearing

2.254. It will be for the person(s) conducting the meeting/hearing to determine the course of the meeting/hearing in accordance with the principles of natural justice and fairness.

2.255. The person(s) conducting the meeting/hearing will have read the investigator's report together with any account given by the police officer concerned during the investigation or when submitting his or her response under regulation 22 of the Conduct Regulations. The person(s) conducting the meeting/hearing will also have had the opportunity to read the relevant documents attached to the investigator's report.

2.256. Any document or other material that was not submitted in advance of the meeting/hearing by the appropriate authority or the police officer concerned may still be considered at the meeting/hearing at the discretion of the person(s) conducting the meeting/hearing. However the presumption should be that such documents will not be permitted unless it can be shown that they were not previously available to be submitted in advance.

2.257. Where any such document or other material is permitted to be considered, a short adjournment may be necessary to enable the appropriate authority or police officer concerned, as the case may be, to read or consider the document or other material and consider its implications.

2.258. Material that will be allowed, although not submitted in advance, will include mitigation where the police officer concerned denied the conduct alleged but the person(s) conducting the meeting/hearing found that the conduct had amounted to misconduct or gross misconduct and are to decide on outcome.

2.259. Where there is evidence at the meeting or hearing that the police officer concerned, at any time after being given written notice under regulation 15 of the Conduct Regulations (or regulation 16 of the Complaint Regulations), failed to mention when interviewed or when making representations to the investigator or under regulation 22 of the Conduct Regulations, any fact relied on in his or her defence at the meeting/hearing, being a fact which in the circumstances existing at the time the police officer

concerned could reasonably have been expected to mention when questioned or providing a written response, the person(s) conducting the meeting/hearing may draw such inferences from this failure as appear appropriate.

2.260. Where a witness does attend to give evidence then any questions to that witness should be made through the person conducting the meeting, or in the case of a misconduct hearing, the chair. This does not prevent the person conducting the meeting, or the chair in a misconduct hearing, allowing questions to be asked directly if they feel that is appropriate. It is for the person(s) conducting the meeting/hearing to control the proceedings and focus on the issues to ensure a fair meeting/hearing.

2.261. The person(s) conducting misconduct meetings/hearings will consider the facts of the case and will decide (on the balance of probabilities) whether the police officer's conduct amounted to misconduct, gross misconduct (in the case of a misconduct hearing) or neither. Where proceedings are conducted by a panel any decision shall be based on a majority (the chair having the casting vote where there is a panel of 2 or 4) if necessary. If the meeting decides that the police officer's conduct did not fall below the standards expected then as soon as reasonably practicable (and no later than 5 working days beginning with the first working day after the meeting or hearing) the police officer shall be informed and no entry will be made on his or her personal record.

2.262. A record of the proceedings at the meeting/hearing must be taken. In the case of a misconduct hearing this will be by means of a verbatim record whether by tape recording or any other recording method.

Standard of proof

2.263. In deciding matters of fact the misconduct meeting/hearing must apply the standard of proof required in civil cases, that is, the balance of probabilities. Conduct will be proved on the balance of probabilities if the person(s) conducting the meeting/hearing is/are satisfied by the evidence that it is more likely than not that the conduct occurred. The balance of probabilities is a single unvarying standard (i.e. there is no sliding scale).

2.264. The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when weighing the probability and deciding whether on balance the conduct occurred.

2.265. Therefore in making a decision whether the alleged conduct of a police officer is proven or not, the person(s) conducting the misconduct meeting/hearing will need to exercise reasonable judgement and give appropriate careful consideration to the evidence.

Outcomes of meetings/hearings

2.266. If the person(s) conducting the misconduct meeting/hearing find that the police officer's conduct did fail to meet the Standards of Professional Behaviour, then the person(s) conducting the meeting/hearing will then determine the most appropriate outcome.

2.267. In considering the question of outcome the person(s) conducting the meeting/hearing will need to take into account any previous written warnings (imposed under the Conduct Regulations but not Superintendent's warnings issued under the previous procedures) that were live at the time of the initial assessment of the conduct in question, any aggravating or mitigating factors and have regard to the police

officer's record of service, including any previous disciplinary outcomes that have not been expunged in accordance with Regulation 15 of the Police Regulations 2003[4]. The person(s) conducting the meeting/hearing may (only if deemed necessary and at the person(s) conducting the meeting/hearings discretion) receive evidence from any witness whose evidence would in their opinion assist them in this regard.

2.268. The person(s) conducting the meeting/hearing are also entitled to take account of any early admission of the conduct on behalf of the police officer concerned and attach whatever weight to this as he, she or they consider appropriate in the circumstances of the case. They may also consider the impact which inclusion on the barred list, as a result of dismissal, would have on an individual who holds a dual role – for example a special constable who is also a police staff member.

2.269. In addition, the police officer concerned and his or her 'police friend' (or where appropriate legal representative) will be given the opportunity to make representations on the question of the most appropriate outcome of the case.

2.270. The appropriate authority also has the opportunity to make representations as to the most appropriate outcome.

Outcomes available at misconduct meetings/hearings

2.271. The person(s) conducting the meeting/hearing may record a finding that the conduct of the police officer concerned amounted to misconduct and take no further action or impose one of the following outcomes:

a. Management advice

i. The police officer will be told:

ii. The reason for the advice.

iii. That he or she has a right of appeal and the name of the person to whom the appeal should be sent.

b. Written warning

i. The police officer will be told:

ii. The reason for the warning.

iii. That he or she has a right to appeal and the name of the person to whom the appeal should be sent.

iv. That the warning will be put on his or her personal file and will remain live for twelve months from the date the warning is given. This means that any misconduct in the next 12 months is likely to lead to (at least) a final written warning.

c. Final written warning

i. The police officer will be told:

[4] As amended by the Police (Amendment) Regulations 2008.

ii. The reason for the warning.

iii. That any future misconduct may result in dismissal

iv. That he or she has a right to appeal and the name of the person to whom the appeal should be sent.

v. That the final written warning will be put on his or her personal file and will remain live for eighteen months from the date the warning is given. This means that only in exceptional circumstances will further misconduct (that justifies more than management advice) not result in dismissal. (In exceptional circumstances only, the final written warning may be extended for a further 18 months on one occasion only.)

2.272. At a misconduct hearing, in addition to the outcomes available at (a), (b) and (c) above the persons conducting the hearing will also have available the outcomes of:

d. **Dismissal with notice** – The notice period will be determined by the persons conducting the hearing subject to a minimum of 28 days. This outcome has the additional consequence that the individual will be included on the barred list.

e. **Dismissal Without Notice** - Dismissal without notice will mean that the police officer is dismissed from the police service with immediate effect. This outcome has the additional consequence that the individual will be included on the barred list.

2.273. In determining an appropriate outcome at a misconduct hearing, the person or persons conducting the hearing must consider and have due regard to "Guidance on outcomes in police misconduct proceedings" issued by the College of Policing pursuant to section 87 of the Police Act 1996.

2.274. The guidance on outcomes is intended to assist persons appointed to conduct misconduct proceedings (misconduct hearings, misconduct meetings, and special case hearings) under Parts 4 and 5 of the Conduct Regulations. The guidance may also be used to inform assessments of conduct under Regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the 2002 Act. The guidance is designed to ensure consistency and transparency in assessing conduct and imposing outcomes at the conclusion of police misconduct proceedings.

2.275. The Outcomes Guidance does not override the discretion of the person(s) conducting the meeting or hearing. Their function is to determine the appropriate outcome and each case will depend on its particular facts and circumstances.

2.276. Where the persons considering the misconduct hearing are considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purposes of making an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

2.277. Where the persons conducting a misconduct hearing find that the police officer's conduct amounted to gross misconduct and decide that the police officer should be dismissed from the police service, then that dismissal will be without notice. Where a police officer appears before a misconduct hearing for an alleged act of gross misconduct, and the person(s) conducting the hearing find that the conduct amounts to misconduct rather than gross misconduct, then (unless the police officer already has a live final written warning) the disciplinary outcomes available to the panel are those that are available at a misconduct meeting only.

2.278. Where a case is referred to a misconduct meeting and the police officer concerned has a live written warning[5] and the police officer either admits or is found at the meeting to have committed a further act of misconduct, then the person conducting the misconduct meeting cannot impose another written warning. The person conducting the meeting will need to decide whether to take no action, give management advice or if he or she determines that either type of written warning is appropriate shall impose a final written warning.

2.279. Where a case is referred to a misconduct hearing on the grounds that the police officer concerned has a live final written warning and at the hearing the police officer either admits or is found to have committed a further act of misconduct, then the persons conducting the misconduct hearing cannot impose another written or a final written warning.

2.280. The persons conducting the hearing may give management advice. However if the persons conducting the hearing determine that the misconduct admitted or found should attract a further written or final written warning they will dismiss the police officer unless they are satisfied that there are exceptional circumstances that warrant the police officer concerned remaining in the police service.

2.281. Where the persons conducting the misconduct hearing determine that such exceptional circumstances exist, they will extend the current final written warning that the police officer has for a further 18 months from the date the warning would otherwise expire (so that the original final written warning will last for 36 months in total). An extension to a final written warning can only be given on one occasion. In other words, if a further act of misconduct comes before a misconduct hearing after an extension has been imposed, unless it is sufficiently minor to justify management advice, the police officer will be dismissed.

2.282. The exceptional circumstances may include where the misconduct which is subject of the latest hearing pre-dates the misconduct for which the police officer received his or her original final written warning or the misconduct in the latest case is significantly less serious than the conduct that led to the current final written warning being given.

Notification of the outcome

2.283. In all cases the police officer will be informed in writing of the outcome of the misconduct meeting/hearing. This will be done as soon as practicable and in any case within 5 working days beginning with the first working day after the conclusion of the misconduct meeting/hearing.

2.284. The notification in the case of a misconduct meeting will include notification to the police officer concerned of his or her right to appeal against the finding and/or outcome and the name of the person to whom any appeal should be sent.

2.285. In the case of a police officer who has attended a misconduct hearing, the notification will include his or her right of appeal to a Police Appeals Tribunal against any finding and/or outcome imposed. In cases involving a complainant or interested person, where the matter was subject of a local or supervised investigation the appropriate authority will be responsible for informing the IPCC, any

[5] A written warning or final written warning is live if at the time the latest allegation of misconduct was assessed (under regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the 2002 Act) the officer concerned had an outstanding written warning or final written warning that had not expired.

complainant and any interested person of the outcome, including the fact and outcome of any appeal against the outcome.

2.286. In cases which have led to dismissal of the individual and their inclusion on the barred list, the individual will be informed of their right to apply for review of their barred status to the College of Policing. See further information in Annex I.

Expiry of Warnings

2.287. Notification of written warnings issued, including the date issued and expiry date will be recorded on the police officer's personal record, along with a copy of the written notification of the outcome and a summary of the matter.

2.288. Where a police officer has a live written warning and transfers from one force to another, then the live warning will transfer with the police officer and will remain live until the expiry of the warning and should be referred to as part of any reference before the police officer transfers.

2.289. Where a police officer who has a live written warning or final written warning takes a career break in accordance with Police Regulations then any time on such a break will not count towards the 12 months (in the case of a written warning) or 18 months (in the case of a final written warning) or 36 months (in the case of an extended final written warning) that the warning is live.

2.290. For example if a police officer has a written warning that has been live for six months and then goes on a career break for 12 months and then returns to the force, he or she will still have six months before the written warning expires on rejoining the force.

Special Priority Payment/Competency Related Threshold Payment

2.291. A finding or admission of misconduct at a misconduct meeting or hearing will not automatically result in the removal of a police officer's special priority payment or competency related threshold payment. Where a police officer has received a written warning or a final written warning this may trigger a review of the appropriateness of that police officer continuing to receive such payments. However the misconduct is to be considered alongside the other criteria for receiving the payments in reaching a decision as to whether it is appropriate and justified to remove such payments.

Attendance of complainant or interested person at misconduct proceedings

2.292. Where a misconduct meeting/hearing is being held as a direct result of a public complaint or a conduct matter which was subject to a local, supervised, managed or independent investigation, the complainant or interested person will have the right to attend the meeting/hearing as an observer (in addition to attending as a witness if required to do so) irrespective of any right to attend as a member of the general public in the case of a hearing. This right is subject to the right of the chair or person conducting the proceedings to exclude or impose conditions on the complainant's or interested party's attendance to facilitate the proper conduct of proceedings. The complainant or interested person may be accompanied by one other person and, if they have a special need, one further person to accommodate that need e.g. an interpreter, sign language expert etc. The appropriate authority will therefore be responsible for notifying the complainant or interested person of the date, time and place of the misconduct meeting/hearing.

2.293. The misconduct meeting/hearing shall not be delayed solely in order to facilitate a complainant or interested person attending the meeting/hearing, although consideration will need to be given to whether the complainant or interested person is also a witness in the matter.

2.294. The complainant or interested person may at the discretion of the person conducting or chairing the meeting/hearing put questions through the person conducting or chairing the meeting or hearing. Note: Complainants and interested persons will not be permitted to put questions to the police officer in a special case hearing. See Annex A.

2.295. Where the complainant or interested person is required to attend a meeting/hearing to give evidence, he or she or any person accompanying him or her will not be permitted to be present in the meeting/hearing before giving his or her evidence. Any person accompanying the complainant or interested person and/or the person assisting the complainant or interested person due to a special need will not be permitted to be present in the meeting/hearing before the complainant or interested person has given evidence (if applicable).

2.296. A complainant or interested person and any person accompanying the complainant will be permitted to remain in the meeting/hearing until the conclusion of the proceedings, after having given evidence (if appropriate). However where the officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the misconduct proceedings may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made. The right of the officer to object in this way should be drawn to their attention by the person conducting or chairing the proceedings.

2.297. The decision about whether to allow the complainant or interested person, or any person accompanying them, to remain or not is a decision for the chair having considered representations made by the officer. If the panel chair is not minded to grant the officer's request immediately, the complainant/interested person should be asked to leave the room under the general power in regulation 31(8) of the Conduct Regulations while the officer makes a submission giving reasons why such persons should be excluded while submissions are made in mitigation. If the complainant or interested person has been excluded, the person conducting or chairing the meeting must, subject to the need to keep them excluded for any other reason, invite them back into the meeting/hearing for the communication of the finding and the outcome of the proceedings.

2.298. The person(s) conducting a misconduct meeting/hearing will have the discretion to allow a witness (who is not a complainant or interested person) who has attended and given evidence at the meeting/hearing to remain or to ask him or her to leave the proceedings after giving his or her evidence.

IPCC direction and attendance at meetings/hearings

2.299. Where the IPCC exercises its power (under paragraph 27 of Schedule 3 to the 2002 Act) to direct an appropriate authority to hold a misconduct meeting/hearing, this will also include a direction as to whether the proceedings will be a misconduct meeting or hearing. In making such a direction the IPCC will have regard to the severity assessment that has been made in the case and been notified to the police officer concerned.

2.300. Where a misconduct meeting/hearing is to be held following: -

a. an investigation managed or independently investigated by the IPCC; or

b. a local or supervised investigation where the IPCC has made a recommendation under paragraph 27(3) of Schedule 3 to the 2002 Act that misconduct proceedings should be taken and the recommendation has been accepted by the appropriate authority; or

c. the IPCC has given a direction under paragraph 27(4) of that Schedule that misconduct proceedings shall be taken.

then the Commission may attend the misconduct meeting/hearing to make representations. Such representations may be an explanation why the IPCC has directed particular misconduct proceedings to be brought or to comment on the investigation.

2.314. Where the Commission is to attend a misconduct hearing, it may instruct a relevant lawyer to represent it.

Right of appeal

2.315. A police officer has a right of appeal against the finding and/or the outcome imposed at a misconduct meeting.

2.316. The appeal is commenced by the police officer concerned giving written notice of appeal to the appropriate authority, clearly setting out the grounds for the appeal within 7 working days beginning with the first working day after the receipt of the notification of the outcome of the misconduct meeting (unless this period is extended by the appropriate authority for exceptional circumstances).

2.317. The police officer has the right to be accompanied by a police friend.

2.318. The police officer concerned may only appeal on the grounds that: -

a. the finding or disciplinary action imposed was unreasonable;

b. there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action; or

c. there was a serious breach of the procedures set out in the Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

Appeal following misconduct meeting – non senior officers (regulations 38 to 40 of the Conduct Regulations)

2.319. An appeal against the finding and/or the outcome from a misconduct meeting will be heard by a member of the police service of a higher rank or a police staff manager who is considered to be of a higher grade than the person who conducted the misconduct meeting. A police staff manager should not be appointed to conduct the appeal if the case substantially involves operational policing matters.

2.320. A police officer or police staff member may be present to advise the person conducting the appeal on procedural matters.

2.321. The person determining the appeal will be provided with the following documents: -

a. The notice of appeal from the police officer concerned setting out his or her grounds of appeal.

b. The record of the original misconduct meeting.

c. The documents that were given to the person who held the original misconduct meeting.

d. Any evidence that the police officer concerned wishes to submit in support of his or her appeal that was not considered at the misconduct meeting.

2.322. The person appointed to deal with the appeal must first decide whether the notice of appeal sets out arguable grounds of appeal. If he or she determines that there are no arguable grounds then he or she shall dismiss the appeal and inform the police officer concerned accordingly setting out his or her reasons.

2.323. Where the person appointed to hear the appeal determines that there are arguable grounds of appeal and the police officer concerned has requested to be present at the appeal meeting, the person appointed to conduct the proceedings will hold a meeting with the police officer concerned. Where the police officer fails to attend the meeting, the person conducting the appeal may proceed in the absence of the police officer concerned.

2.324. The person conducting the appeal may consider:

a. Whether the finding of the original misconduct meeting was unreasonable having regard to all the evidence considered or if the finding could now be in doubt due to evidence which has emerged since the meeting.

b. Any outcome imposed by the misconduct meeting which may be considered as too severe or too lenient having regard to all the circumstances of the case.

c. Whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the police officer (although the person conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).

2.325. The person determining the appeal may confirm or reverse the decision appealed against. Where the person determining the appeal decides that the original disciplinary action imposed was too lenient then he or she may increase the outcome up to a maximum of a final written warning.

2.326. In general, an appeal is not a repeat of the misconduct meeting. It is to examine a particular part(s) of the misconduct case which is under question and which may affect the finding or the outcome. However, in a case where the person conducting the appeal decides that the finding or outcome may be unsafe due to new evidence, a procedural breach or other unfairness, it may be necessary to rehear the matter in its entirety in order to decide what the finding or outcome would have been if the evidence had been available or the procedural breach or unfairness had not occurred.

2.327. The appeal will normally be heard within 5 working days beginning with the working day after the determination that the officer concerned has arguable grounds of appeal. If the police officer concerned or his or her police friend is not available at the date or time specified by the person conducting the appeal, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the person conducting the appeal the appeal must be postponed to that time. Similarly, the officer concerned can object to the person appointed to conduct the appeal in the same way as he or she could for the original misconduct meeting.

Appeal following misconduct hearing – non senior officers

2.328. Where a police officer has appeared before a misconduct hearing then any appeal against the finding or outcome is to the Police Appeals Tribunal (see Annex C). The police officer should be informed that the Police Appeals Tribunal can increase any outcome imposed as well as reduce or overturn the decision of the misconduct hearing or special case hearing.

2.329. Where the person determining the appeal decides that the finding or outcome may be unsafe due to new evidence under rule 4(4)(b) of the Police Appeals Tribunal Rules or procedural unfairness under rule 4(4)(c), then he or she may set aside the relevant decision and remit the matter back to the force to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance

Regulations. Where the original decision was taken by a panel, the case will be reheard by a fresh panel which does not contain any of the members of the original panel.

Appeals against misconduct meetings/hearings – senior officers

2.330. Senior officers have the right to appeal against the finding and/or outcome of a misconduct meeting or hearing. The appeal in both cases will be made to the Police Appeals Tribunal. The police officer should be informed that the Police Appeals Tribunal can increase any outcome imposed as well as reduce or overturn the decision of the misconduct hearing or special case hearing.

CHAPTER 3

Guidance on Unsatisfactory Performance and Attendance Procedures (UPPs)

General

Introduction

3. The formal procedures to deal with unsatisfactory performance and attendance are set out in the Performance Regulations and are referred to in this guidance as UPPs.

3.1. The purpose of this guidance is to help managers to decide how and when to use the formal procedures in the Performance Regulations to manage unsatisfactory performance or unsatisfactory attendance on the part of police officers. Guidance focussing specifically on attendance management can be found at paragraph 3.45.

3.2. The underlying principle of the procedures is to provide a fair, open and proportionate method of dealing with performance and attendance issues and to encourage a culture of learning and development for individuals and the organisation.

3.3. The procedures in the Performance Regulations are largely the same whether applied to unsatisfactory performance or attendance (the differences that do exist are set out clearly in this guidance). However the issues that arise in attendance cases may be different from those in performance cases. This guidance therefore contains separate sections dealing with performance and attendance before a section on the procedures.

3.4. The primary aim of the procedures is to improve poor performance and attendance in the police service. It is envisaged that early intervention via management action should achieve the desired effect of improving and maintaining a police officer's performance or attendance to an acceptable level.

3.5. There will, however, be cases where it will be appropriate for managers to take formal action under the procedures. At the conclusion of proceedings under the Regulations, one possible outcome is that a police officer's service may be terminated.

3.6. The UPPs have been prepared by the Home Office in consultation with the National Policing Lead for Complaints and Misconduct, the Police Federation of England and Wales (PFEW), the Police Superintendents' Association of England and Wales (PSAEW), the Chief Police Officers Staff Association (CPOSA), the Association of Police and Crime Commissioners (APCC), the Association of Police and Crime Chief Executives (APACE), Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service (HMICFRS), the Independent Police Complaints Commission (IPCC) and the College of Policing.

Scope

3.7. The procedures apply to police officers up to and including the rank of chief superintendent.

3.8. The procedures apply to all special constables. However, given the nature of special constables as unpaid volunteers, cases where the procedures are initiated for special constables may be limited to those where the special constable either contests that his or her performance or attendance is unsatisfactory or agrees that it is unsatisfactory but expresses a desire to continue with his or her special constable duties. In other cases the special constable may choose to resign from his or her role as a special

constable. In setting meeting dates and establishing panels, regard should be had to the nature of special constables as volunteers who may have other work or personal commitments.

3.9. The procedures do not apply to student police officers during their probationary period. The procedures governing performance and attendance issues in respect of police students are determined locally by each force. These procedures are underpinned by regulation 13 of the Police Regulations 2003.

Principles

3.10. Performance and attendance management in the police service are intended to be positive and supportive processes, with the aim being to improve performance or attendance.

3.11. All unsatisfactory performance and attendance matters should be handled in a timely manner while maintaining confidence in the process. UPPs should be applied fairly in both a non-discriminatory and non-adversarial way and matters must be handled in the strictest confidence.

3.12. Where the UPPs are used, line managers in the police service and others involved in the process must act in a way which an objective observer would consider reasonable. At all times, the requirements of the Performance Regulations must be complied with.

3.13. The importance of challenging unsatisfactory performance or attendance of individual police officers in the context of overall unit/ force performance and the police officer's personal development should not be underestimated. Dealing sensitively and appropriately with unsatisfactory performance or attendance issues does not constitute bullying. If a police officer believes that he or she is being unfairly treated, he or she may have available the avenues of appeal that exist at each stage of the UPPs.

3.14. A police officer may seek legal advice at any time although legal representation is confined to third stage meetings where the procedure has been initiated at this stage. Police officers other than special constables can seek advice from their staff association and all police officers can be advised and represented by their police friend in accordance with the principles described in the introduction section of the guidance.

3.15. In deciding matters of fact the person(s) conducting the UPP meeting must apply the standard of proof required in civil cases, that is, the balance of probabilities. Unsatisfactory performance or attendance will be proved if the person(s) conducting the meeting is/are satisfied by the evidence that it is more likely than not that the performance or attendance of the police officer is unsatisfactory.

3.16. The balance of probabilities is a single unvarying standard (i.e. there is no sliding scale). The more serious the allegation of unsatisfactory performance or attendance that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the unsatisfactory performance or attendance occurring is itself a matter to be taken into account when weighing the probability and deciding whether on balance it has occurred.

3.17. Therefore in making a decision whether the performance or attendance is proven unsatisfactory or not, the person(s) conducting the meeting will need to exercise reasonable judgement and give appropriate careful consideration to the evidence.

Ongoing performance assessment and review

3.18. Every police officer should have some form of performance appraisal, or what is commonly referred to in most cases as a PDR. This should be the principal method by which the police officer's performance and attendance is monitored and assessed. It is the responsibility of the line manager to set

objectives for his or her staff and it is the responsibility of all police officers, with appropriate support from management, to ensure that they both understand and meet those objectives. Objectives set by the line manager should be specific, measurable, achievable, relevant and time-related (SMART).

3.19. The activities and behaviours expected of a police officer in order to achieve his or her objectives should be in accordance with the relevant national framework which will form the basis of the police officer's role profile.

3.20. Any shortfall in performance or attendance should be pointed out at the earliest opportunity by the line manager and consideration given as to whether this is due to inadequate instruction, training, supervision or some other reason.

3.21. For national guidance on PDR implementation and improvement see: http://www.college.police.uk/What-we-do/Support/Reviewing-performance/Pages/PDR.aspx

Sources of information

3.22. Unsatisfactory performance or attendance will often be identified by the immediate line manager of the police officer as part of his or her normal management responsibilities.

3.23. Where the police officer currently works to a manager who has no line management responsibility for him or her, it is the responsibility of that manager to inform the police officer's line manager of any performance or attendance issues he or she has identified.

3.24. Line managers may be police officers or police staff members.

3.25. It is also possible that line managers may be alerted to unsatisfactory performance or attendance on the part of one of their police officers as a result of information from a member of the public. The information from a member of the public may take the form of a formal complaint. Such cases must be dealt with in accordance with the established procedures for the handling of complaints.[6] Appropriate use of the local resolution of a complaint offers an opportunity to deal speedily with a complainant's concerns and to address any performance issues.

3.26. It may be that the outcome of an investigation into a complaint alleging misconduct is that an issue of unsatisfactory performance or attendance has been identified involving one or more police officers. In such cases the outcome of the investigation may be that the appropriate authority will determine that there is no case to answer in respect of misconduct or gross misconduct but it may be appropriate to take action under the UPPs in order that the police officer may learn and improve his or her performance or attendance.

3.27. A complaint from a member of the public about a police officer's performance may trigger action under the UPPs if appropriate. It may also be the case that a complaint adds to existing indications of unsatisfactory performance, such that action under the UPPs is appropriate or, if the police officer is already subject to these, continuation to the next stage of the process.

3.28. Whilst the unsatisfactory performance and attendance procedures are internal management procedures, the appropriate authority must inform the IPCC, complainants and interested persons of the outcome of these procedures, including the fact and outcome of any appeal against the outcome of the procedures, in relation to the police officer to whom the matter relates. This information must be given as soon as practicable after the relevant procedure is concluded.

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[6] See IPCC Statutory Guidance.

3.29. A Complainants and interested persons have a right to attend a stage 3 meeting where a police officer is facing an allegation of gross incompetence as a result of a public complaint or any conduct matter which has been subject to a local, supervised, managed or independent investigation. This right is subject to the right of the chair or person conducting the proceedings to exclude or impose conditions on the complainant's or interested party's attendance to facilitate the conduct of proceedings. A complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

3.30. Where the complainant or interested person is required to attend a meeting to give evidence, he or she or any person accompanying him or her will not be permitted to be present in the meeting/hearing before giving his or her evidence. Any person accompanying the complainant or interested person and/or the person assisting the complainant or interested person due to a special need will not be permitted to be present in the meeting/hearing before the complainant or interested person has given evidence (if applicable).

3.31. Where the officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the proceedings may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made. The right of the officer to object in this way should be drawn to their attention by the person conducting or chairing the proceedings

3.32. The decision about whether to allow the complainant or interested person, or any person accompanying them, to remain or not is a decision for the chair having considered representations made by the officer. If the panel chair is not minded to grant the officer's request immediately, the complainant/interested person should be asked to leave the room under the general power in regulation 40(13) of the Performance Regulations while the officer makes a submission giving reasons why such persons should be excluded while submissions are made in mitigation. If the complainant or interested person has been excluded, the person conducting or chairing the meeting must, subject to the need to keep them excluded for any other reason, invite them back into the meeting for the communication of the finding and the outcome of the proceedings.

<u>Management action</u>

3.33. Managers are expected to deal with unsatisfactory performance or attendance issues in the light of their knowledge of the individual and the circumstances giving rise to these concerns.

3.34. There are, however, some generally well understood principles which should apply in such circumstances:

a. the line manager must discuss any shortcoming (s) or concern (s) with the individual at the earliest possible opportunity. It would be quite wrong for the line manager to accumulate a list of concerns about the performance or attendance of an individual and delay telling him or her about them until the occasion of the police officer's annual or mid-term PDR (or equivalent) meetings;

b. the reason for dissatisfaction must be made clear to the individual as soon as possible and there must be a factual basis for discussing the issues i.e. the discussion must relate to specific incidents or omissions that have occurred;

c. line managers should seek to establish whether there are any underlying reasons for the unsatisfactory performance or attendance . For example, in the context of performance, a failure to perform a task correctly may be because the individual was never told how to do it or was affected by personal circumstances. In that case it may be appropriate for the line manager to arrange further instruction or guidance;

d. consideration should be given as to whether there is any health or welfare issue that is or may be affecting performance or attendance. If a police officer has or may have a disability within the scope of the Equality Act 2010 Act this in particular needs to be taken fully into account and the requirements of that legislation complied with;

e. in cases where the difficulty appears to stem from a personality clash with a colleague or line manager, or where for other reasons a change of duties might be appropriate, the police officer's line management may, in consultation with the appropriate HR adviser, consider re-deployment if this provides an opportunity for the police officer to improve his or her performance or attendance. Where a police officer is re-deployed in this way, the police officer and his or her new line management should be informed of the reasons for the move and of the assessment of his or her performance or attendance in the previous role;

f. the line manager must make it clear to the police officer that he or she is available to give further advice and guidance if needed;

g. depending on the circumstances, it may be appropriate to indicate to the police officer that if there is no, or insufficient, improvement, then the matter will be dealt with under the UPPs;

h. line managers are expected to gather relevant evidence and keep a contemporaneous note of interactions with the police officer;

i. challenging unsatisfactory performance or attendance in an appropriate manner does not constitute bullying. In considering whether action constitutes bullying, forces should have regard to their local policy on bullying.

3.35. The principles outlined above cover the position when a line manager first becomes aware of some unsatisfactory aspect(s) of the police officer's performance or attendance and is dealing with the issue as an integral part of normal line management responsibilities.

3.36. Management action taken as a result of identifying unsatisfactory performance or attendance should be put on record which may be the police officer's PDR or equivalent. In particular, the line manager should record the nature of the performance or attendance issue; the advice given and steps taken to address the problems identified. Placing matters on record is important to ensure continuity in circumstances where one or more members of the management chain may move on to other duties or the police officer concerned moves to new duties. It is also important to put on record when improvement has been made in his or her performance or attendance.

3.37. Ideally, as a result of management action, performance or attendance will improve and continue to an acceptable level.

3.38. Where there is no improvement, insufficient improvement, or the improvement is not sustained over a reasonable period of time (preferably agreed between the line manager and the police officer), it will then be appropriate to use the UPPs.

3.39. The period of time agreed or determined by the line manager for the police officer concerned to improve his or her performance or attendance prior to using the UPPs must be sufficient to provide a reasonable opportunity for the desired improvement or attendance to take place and must be time limited.

3.40. This period may be extended if, due to some unforeseen circumstance (e.g. certified sickness absence in the context of performance issues) the police officer is unable to demonstrate whether or not the required improvement has been achieved.

Performance Issues

Introduction

3.41. The performance of individual police officers is a key element in the delivery of a quality policing service. Police officers should know what standard of performance is required of them and be given appropriate support to attain that standard.

3.42. Performance management is an integral part of a line manager's responsibilities. Managers should let a police officer know when he or she is doing well or, if the circumstances arise, when there are the first signs that there is a need for improvement in his or her performance. An essential part of effective line management is that managers should be aware of the contribution being made to meeting the aims and objectives of the team by each of the individuals they manage.

"Unsatisfactory performance"

3.43. Unsatisfactory performance (or attendance) is defined in regulation 4 of the Performance Regulations as:

"an inability or failure of a police officer to perform the duties of the role or rank he [or she] is currently undertaking to a satisfactory standard or level."

Framework for action

3.44. There is no single formula for determining the point at which a concern about a police officer's performance should lead to formal procedures under the Performance Regulations being taken. Each case must be considered on its merits and there is no restriction on referring appropriate cases straight to a first stage meeting where the manager considers it appropriate to do so. However the following points need to be emphasised:

a. the intention of performance management including formal action under the Performance Regulations is to improve performance;

b. occasional minor lapses below acceptable standards may be dealt with in the course of normal management activity and the application of the UPPs may not be necessary;

c. managers should be able to demonstrate that they have considered whether management action is appropriate before using the UPPs.

Attendance Issues

Introduction

3.45. This part of the guidance should be read in conjunction with the guidance on developing attendance management policies (see CHAPTER 4). All forces are required to have an attendance management policy in place. Failure to do so or to adhere to the terms of that policy could be taken into account under these procedures.

3.46. The Police Service is committed to providing, as far as is reasonably practicable, a healthy and safe working environment for its police officers. It recognises that the health and welfare of police officers is a key element in the delivery of quality services, as well as in maintaining career satisfaction and staff morale.

3.47. The key objective of attendance management policies within forces and the appropriate use of the Performance Regulations insofar as they relate to managing unsatisfactory attendance, is to encourage an attendance culture within forces.

3.48. Managing sickness absence is vitally important both in terms of demonstrating a supportive attitude towards police officers and for the efficiency of the organisation. Managing attendance is about creating a culture where all parties take ownership of the policy and act reasonably in the operation of the scheme with managers being proactive in managing sickness.

3.49. The primary aim of the procedures is to improve attendance in the police service. It is envisaged that supportive action will in most cases achieve the desired effect of improving and maintaining a police officer's attendance to an acceptable level.

3.50. There may however be cases where it will be appropriate for managers to take formal action under the Performance Regulations. At the conclusion of procedures under the Regulations, termination of service is a possible outcome.

3.51. Where the UPPs are used in relation to attendance matters, such matters will normally relate to periods of sickness absence such that the ability of the police officer to perform his or her duties is compromised.

3.52. Other forms of absence not related to genuine sickness would normally be dealt with under the misconduct procedures e.g. where a police officer's absence is unauthorised.

Framework for action

3.53. Attendance management in the police service is intended to be a positive and supportive process to improve attendance. In all cases, the starting point is supportive action. Except where a police officer fails to co-operate, appropriate supportive action must be taken before formal action is taken under the Performance Regulations. A failure by a police officer to co-operate will not prevent formal action being taken or continued.

3.54. If supportive action is taken, the police officer co-operates and the attendance improves and is maintained at a satisfactory level, then there will be no need to take formal action under the Performance Regulations.

3.55. There is no single formula for determining the point at which concern about a police officer's attendance should lead to formal procedures under the Performance Regulations being invoked. Each case must be considered on its merits. However the following points need to be emphasised:

3.56. The intention of attendance management including formal action under the Performance Regulations is to improve attendance.

3.57. Where police officers are injured or ill they should be treated fairly and compassionately.

3.58. Managers should be able to demonstrate that they have acted reasonably in all actions taken at all stages of the attendance management process, including any action under the Performance Regulations.

3.59. In cases where a decision is made at a third stage meeting to impose an outcome, including dismissal from the service, then in most cases the police officer will have the right to appeal to a police appeals tribunal.

Monitoring attendance

3.60. All forces must ensure that arrangements are in place for the effective monitoring of sickness absences (and the reasons for them).

3.61. It is the responsibility of line managers, in conjunction with the force's Human Resources (HR) department if necessary, to monitor a police officer's attendance. A formal record of a police officer's period of illness will be kept in accordance with regulation 15 of The Police Regulations 2003.

3.62. HR managers should be consulted when line managers are deciding whether it might be appropriate to use the UPPs in relation to unsatisfactory attendance.

Occupational health

3.63. The force Occupational Health Service is an essential part of effective attendance management and should be involved as soon as any concerns about a police officer's attendance are identified.

3.64. Where action is taken under the UPPs in respect of a police officer's attendance, the police officer may be referred to the Occupational Health Service for up to date information and advice at any stage within the procedure in accordance with force policy. This should enable the force to make an informed decision about a police officer's attendance. Where police officers do not attend appointments or otherwise fail to co-operate with the force's Occupational Health Service, an assessment will be made on the information available.

3.65. The role of the force's Occupational Health Service is to advise on medical issues affecting a police officer's performance and attendance. Where the force has concerns about a police officer's health and the effect it has on his or her work and attendance, it may decide to seek medical advice on a range of issues, including but not limited to:

a. the nature and extent of the police officer's medical problems;
b. when the medical problem is likely to be resolved;
c. whether the police officer will be fit to carry out his/her duties on his or her return to work;
d. the duties that the police officer may be fit to undertake;
e. whether the police officer is a disabled person within the meaning of the Equality Act 2010;
f. whether there are any adjustments or adaptations to the work, equipment or workplace that might assist in improving attendance;
g. the likelihood of the illness recurring or of some other illness emerging;
h. any concerns raised by the police officer about their health and/or working environment;
i. whether the police officer may be permanently disabled.

Equality Act 2010 and other statutory obligations

3.66. In any unsatisfactory attendance case it is essential that managers and the force ensure compliance with their obligations under the Equality Act.

3.67. Compliance with other statutory obligations including the Data Protection Act 1998 must also be ensured.

Action under the Performance Regulations

3.68. Formal action under the Performance Regulations may be taken in cases of both unacceptable levels of persistent short-term absences and long-term absences due to sickness and/or injury. It should however be noted that it is not possible to be prescriptive about all circumstances where action under the Regulations may be appropriate.

3.69. In deciding whether to take action under the procedures managers must treat each case on its merits and consider all of the pertinent facts available to them, including:

a. the nature of the illness, injury or condition;
b. the likelihood of the illness, injury or condition (or some other related illness, injury or condition) recurring;
c. the pattern and length of absence(s) and the period of good health between them;
d. the need for the work to be done i.e. what impact on the force's performance and workload is the absence having;
e. the extent to which a police officer has co-operated with supportive management action;
f. whether the police officer was made aware, in the earlier supportive action, that unless an improvement was made, action under the Performance Regulations might be used;
g. whether the selected medical practitioner (SMP) has been asked by the local policing body to consider the issue of permanent disablement and/or the local policing body is considering medical retirement;
h. the impact of the Equality Act 2010.

3.70. Whether it is appropriate to take formal action in any particular case will depend on the known merits and facts of that case. There is no restriction on taking action under the UPPs in relation to previous unsatisfactory attendance notwithstanding that the officer has now returned to work.

The UPP Process

Stages

3.71. There are potentially three stages to the UPPs, each of which involves a different meeting composition and possible outcomes.

3.72. A line manager can ask a HR professional or police officer (who should have experience of UPPs and be independent of the line management chain) to attend a UPP meeting to advise him or her on the proceedings at the first stage meeting. A line manager may also obtain such advice prior to a first stage meeting if he or she is in any doubt about the process. The second line manager may also have an advisor (as above) in respect of the second stage meeting. For stage three meetings, an HR professional, police officer, counsel or solicitor may attend the meeting to advise the panel on the proceedings.

Improvement notices and action plans

3.73. At the first and second stages, if it is found that the police officer's performance or attendance is unsatisfactory, an improvement notice will be issued. Improvement notices require a police officer to improve on his or her performance or attendance and must state:

- in what respect the police officer's performance or attendance is considered unsatisfactory;
- the improvement in performance or attendance required to bring the police officer to an acceptable standard;
- a "specified period" (see paragraph 3.75, below) within which improvement is expected to be made; and
- the "validity period" (see paragraph 3.76, below) of the written improvement notice

3.74. The improvement notice should also inform the police officer of the possible consequences if improvement is not made or maintained within the period specified by the appropriate manager or panel (as applicable) or within the 12 month validity period, i.e. that he or she may be required to attend the next stage of the procedures.

3.75. The "specified period" of an improvement notice is a period specified by the manager conducting the meeting (having considered any representations made by or on behalf of the police officer) within which the police officer must improve his or her performance or attendance. It is expected that the specified period for improvement would not normally exceed 3 months. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months).

3.76. The "validity period" of an improvement notice describes the period of 12 months from the date of the notice within which performance or attendance must be maintained (assuming improvement is made during the specified period). If the improvement is not maintained within this period then the next stage of the procedures may be used (see also paragraph 3.82).

3.77. Improvement notices must be accompanied by the written record of the meeting and a notice informing the police officer of his or her right to appeal against the finding or terms of the improvement notice (or both of these). Following a second stage meeting, that documentation must also inform the police officer of his or her right to appeal against the decision to require him or her to attend the meeting. Any such appeal can only be made on the ground that the meeting did not concern unsatisfactory performance or attendance which was similar to or connected with that referred to in the written improvement notice.

3.78. Written improvement notices must be signed and dated by the person responsible for issuing the notice e.g. in the case of an improvement notice issued following a second stage meeting, by the second line manager.

3.79. An improvement notice would normally incorporate an action plan. An action plan describes what action(s) the police officer should take which should help him or her achieve and maintain the improvement required and would normally be formulated and agreed by both the police officer (and his or her police friend if desired) and his or her line manager. In particular, the action plan should:

- identify any weaknesses which may be the cause of unsatisfactory performance or attendance;

- describe what steps the police officer must take to improve performance and/or attendance and what support is available from the organisation e.g. training and support;

- specify a period within which actions identified should be followed up; and

- set a date (s) for a staged review (s) of the police officer's performance or attendance.

Improvement notice extensions and suspensions

3.80. On the application of the police officer or otherwise (e.g. on the application of his or her line manager), the appropriate authority may extend the "specified" period if it considers it appropriate to do so. This provision is intended to deal with situations that were not foreseen at the time of the issue of the improvement notice. For example, where the police officer has not had sufficient time to improve due to an emergency deployment to other duties.

3.81. In setting an extension to the specified period, consideration should be given to any known periods of extended absence from the police officer's normal role e.g. if the police officer is going to be on long periods of pre-planned holiday leave, study leave, or is due to undergo an operation. The extension should not lead to the improvement period exceeding 12 months unless the appropriate authority is satisfied that there are exceptional circumstances making this appropriate. These circumstances should be recorded.

3.82. The period for improvement under an improvement notice and the validity period of an improvement notice do not include any time that the police officer is taking a career break. For example, if a police officer is issued with an improvement notice with a specified period of 3 months and then takes career leave two months into the notice, whenever the police officer returns, he or she will have one month left of the 3 month specified period and ten months of the validity period of the notice.

Initiation of procedures at stage three

3.83. In very limited circumstances, explained in more detail in paragraph 3.171, it is possible to commence the UPPs at the third stage. This is to allow for cases of a degree of severity such that initiation at this stage is the only appropriate option.

3.84. In these cases only the police officer is entitled to choose to be legally represented by counsel or a solicitor.

Multiple instances of unsatisfactory performance

3.85. A police officer can move to a later stage of the UPPs only in relation to unsatisfactory performance or attendance that is similar to or connected with the unsatisfactory performance or attendance referred to in any previous written improvement notice. Where failings relate to different forms of unsatisfactory performance or attendance it will be necessary to commence the UPPs at the first stage (unless the failing constitutes gross incompetence). If more than one UPP is commenced, then, given that the procedures will relate to different failings and will have been identified at different times, the finding and outcome of each should be without prejudice to the other(s).

3.86. However, there may be circumstances where procedures have been initiated for a particular failing and an additional failing comes to light prior to the first stage meeting. In such circumstances it is possible to consolidate the two issues at the first stage meeting provided that there is sufficient time prior to the meeting to comply with the notification requirements explained in more detail below. If this is not possible, the first stage meeting should either be rearranged to a date which allows the requirements to be met or a separate first stage meeting should be held in relation to the additional matter.

The First Stage

Preparation and purpose

3.87. Having considered the use of management action (see paragraph 3.33), where a line manager considers that a police officer's performance or attendance is unsatisfactory and decides that the UPPs are the most appropriate way of addressing the matter(s), he or she will notify the police officer in writing that he or she is required to attend a first stage meeting and include in that notification the following details:

- details of the procedures for determining the date and time of the meeting (see paragraph 3.94);
- a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;
- the possible outcomes of a first stage, second stage and third stage meeting;
- that a human resources professional or a police officer (who should have experience of UPPs and be independent from the line management chain) may attend the meeting to advise the line manager on the proceedings;
- that if the police officer agrees, any other person specified in the notice may attend the meeting;
- that prior to the meeting the police officer must provide the line manager with any documentation he or she intends to rely on in the meeting; and
- the police officer's rights i.e. his or her right to seek advice from a representative of his or her staff association (in the case of a member of the police force) and to be accompanied and represented at the meeting by a police friend.

3.88. A Where the police officer concerned raises a grievance or otherwise objects to the manager holding a first stage meeting (for example citing a personality clash) then the meeting will still be held by the manager and if the officer considers that he or she has grounds for appeal the objection of the officer should be handled through that process. This is without prejudice to the power for a senior manager to appoint another person to carry out any of the functions of the line manager if appropriate.

3.89. The notice shall be accompanied by copies of related documentation relied upon by the line manager in support of the view that the police officer's performance or attendance is unsatisfactory.

3.90. In advance of the meeting, the police officer must provide the line manager with any documents on which he or she intends to rely in support of his or her case.

3.91. Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be that such documents or material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

3.92. The purpose of the meeting is to hear the evidence of the unsatisfactory performance or attendance and to give the police officer the opportunity to put forward his or her views. It will also be an

opportunity to hear of any factors that are affecting the police officer's performance or attendance and what the police officer considers can be done to address them.

3.93. The line manager should explain that there are potentially three stages to the procedures and that the maximum outcome of a stage one meeting is an improvement notice and the maximum outcome of a stage two meeting is a final improvement notice. The line manager will also explain that if the procedure is followed to the final stage, dismissal, a reduction in rank (in the case of a member of a police force and in performance cases only), redeployment to alternative duties or an extended improvement notice (in exceptional circumstances) are possible outcomes.

3.94. Wherever possible, the meeting date and time should be agreed between the line manager and the police officer. However, where agreement cannot be reached the line manager must specify a time and date. If the police officer or his or her police friend is not available at the date or time specified by the line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that specified by the line manager, the meeting must be postponed to that time.

3.95. Once the date for the meeting is fixed, the line manager should send to the police officer a notice in writing of the date, time and place of the first stage meeting. This notification of the date and time of the meeting may be given at the same time as the notice requiring the police officer to attend a first stage meeting.

<u>At the First Stage meeting</u>

3.96. At the first stage meeting the line manager will:

- explain to the police officer the reasons why the line manager considers that the performance or attendance of the police officer is unsatisfactory;
- provide the police officer with the opportunity to make representations in response;
- provide his or her police friend (if he or she has one) with an opportunity to make representations (see Role of Police Friend); and
- listen to what the police officer (and/or his or her police friend) has to say, ask questions and comment as appropriate.

3.97. The line manager may adjourn the meeting at any time if he or she considers it is necessary or expedient to do so. An adjournment may be appropriate where information which needs to be checked by the line manager emerges during the course of the meeting or the manager decides that he or she wishes to adjourn the meeting whilst he or she makes a decision.

3.98. Where the line manager finds that the performance or attendance of the police officer has been satisfactory during the period in question, he or she will inform the police officer that no further action will be taken.

3.99. Where having considered any representations by either the police officer and/ or his or her police friend, the line manager finds that the performance or attendance of the police officer has been unsatisfactory he or she shall:

a. inform the police officer in what respect (s) his or her performance or attendance is considered unsatisfactory;

b. inform him or her of the improvement that is required in his or her performance or attendance;

c. inform the police officer that, if a sufficient improvement is not made within the period specified by the line manager, he or she may be required to attend a second stage meeting.

d. inform the police officer that he or she will receive a written improvement notice.

e. inform the police officer that if the sufficient improvement in his or her performance or attendance is not maintained during the validity period of such notice he or she may be required to attend a second stage meeting.

3.100. It is expected that the specified period for improvement would not normally exceed 3 months. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months).In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

Procedure following the First Stage meeting

3.101. As soon as reasonably practicable, following the meeting, the line manager shall cause to be prepared a written record of the meeting and, where he or she found at the meeting that the performance or attendance of the police officer was unsatisfactory, a written improvement notice. The written record and any improvement notice shall be sent to the officer as soon as reasonably practicable after they have been prepared. The written record supplied to the police officer should comprise a summary of the proceedings at that meeting.

3.102. Any written improvement notice must set out the information conveyed to the police officer in paragraph 3.138, state the period for which it is valid and be signed and dated by the line manager. Any improvement notice must be accompanied by a notice informing the police officer of his or her right to appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police officer of his or her right to submit written comments on the written record of the meeting and of the procedure for doing so.

3.103. The police officer may submit written comments on the written record not later than the end of 7 working days after the date that he or she received it (unless an extension has been granted by the line manager following an application by the police officer). Any written comments provided by the police officer should be retained with the note. However, if the police officer has exercised his or her right to appeal against the finding or outcome of the first stage meeting, the police officer may not submit comments on the written record.

3.104. It is the responsibility of the line manager to ensure that the written record, written improvement notice and any written comments of the police officer regarding the written record are retained together and filed in accordance with force policies.

3.105. Normally it will be appropriate to incorporate an action plan (see paragraph 3.79) setting out the actions which should assist the police officer to perform his or her duties to an acceptable standard. If possible the action plan should be agreed, either at the UPP meeting or at a later time specified by the line manager. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for his or her own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

Assessment of Performance or Attendance

3.106. It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the line manager throughout the

specified period of the improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards his or her performance or attendance and offer advice and guidance where appropriate.

3.107. As soon as reasonably practicable after the specified period of the improvement notice comes to an end, the line manager, in consultation with the second line manager or an HR professional (or both), must formally assess the performance or attendance of the police officer during that period.

3.108. If the line manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The notification should also inform the police officer that whilst the performance or attendance of the police officer is now satisfactory, the improvement notice is valid for a period of 12 months from the date printed on the notice so that it is possible for the second stage of the procedures to be initiated if the performance or attendance of the police officer falls below an acceptable level within the remaining period.

3.109. If the line manager considers that the police officer's performance or attendance is still unsatisfactory, the line manager should notify the police officer in writing of this. The line manager must also notify the police officer that he or she is required to attend a second stage meeting to consider these ongoing performance or attendance issues.

3.110. If the police officer has improved his or her performance or attendance to an acceptable standard within the specified improvement period, but then fails to maintain that standard within the 12 month validity period, it is open to the line manager to initiate stage two of the procedures.

3.111. In such circumstances the line manager must notify the police officer in writing of his or her view that the police officer's performance or attendance is unsatisfactory as the police officer has failed to maintain the improvement and that as a consequence the police officer is required to attend a second stage meeting to discuss his or her failure to maintain a satisfactory standard of performance or attendance.

3.112. Where an officer is required to attend a second stage meeting and at that meeting it is found that the officer has improved, he or she can still be required to attend another second stage meeting if he or she does not maintain his or her improvement within the 12 months that the improvement notice is valid.

First Stage appeals

3.113. A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at stage one of the UPPs. However, any finding and outcome of this first stage meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, he or she should continue to follow the terms of the improvement notice and any accompanying action plan pending the determination of the appeal.

3.114. Any appeal should be made in writing to the second line manager within 7 working days following the day of the receipt of the improvement notice and written record of the meeting (unless the period is extended by the second line manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

Appeal grounds

3.115. The grounds for appeal are:

a. that the finding of unsatisfactory performance or attendance is unreasonable;

b. that any of the terms of the improvement notice are unreasonable;

c. that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the terms of the written improvement notice;

d. that there was a breach of the procedures set out in the Police (Performance) Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the improvement notice.

3.116. On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance or the terms of the written improvement notice, those being:

a. the respect in which the police officer's performance or attendance is considered unsatisfactory;

b. the improvement which is required of the police officer; and/ or

c. the length of the period specified for improvement by the line manager at the first stage meeting.

3.117. The police officer has the right to be accompanied and represented by a police friend at the first stage appeal meeting.

3.118. Wherever possible, the meeting date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or his or her police friend is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.

3.119. Once a date for the meeting is fixed, the second line manager should send to the police officer a notice in writing of the date, time and place of the first stage appeal meeting together with the information required to be provided under regulation 19 of the Performance Regulations.

<u>At the first stage appeal meeting</u>

3.120. At this meeting the second line manager will:

a. provide the police officer with the opportunity to make representations;
b. provide his or her police friend (if he or she has one) with an opportunity to make representations (see Role of Police Friend).

3.121. Having considered any representations by either the police officer and/ or his or her police friend, the second line manager may:

a. confirm or reverse the finding of unsatisfactory performance or attendance;
b. endorse or vary the terms of the improvement notice appealed against.

3.122. The second line manager may deal with the police officer in any manner in which the line manager could have dealt with him or her at the first stage meeting. Where the second line manager has reversed the finding of unsatisfactory performance or attendance he or she must also revoke the written improvement notice.

3.123. Within 3 working days of the day following the conclusion of the appeal meeting, the police officer will be given written notice of the second line manager's decision. If the second line manager is in a position to send a written summary of the reasons for that decision, then this may also accompany the written notice of the decision.

3.124. However, where the second line manager sends only the written notice of the decision to the police officer, as soon as reasonably practicable after the conclusion of the meeting, he or she will send a written summary of reasons for that decision.

3.125. Any decision made that changes the finding or outcome of the first stage meeting will take effect by way of substitution for the finding or terms appealed against and as from the date of the first stage meeting.

The Second Stage

Preparation and purpose

3.126. Initiation of the second stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the improvement notice issued at the first stage.

3.127. Where, at the end of the period specified in an improvement notice, the line manager finds that the police officer's performance or attendance has not improved to an acceptable standard during that period or that the police officer has not maintained an acceptable level of performance or attendance during the validity period of the notice, then the second line manager will notify the police officer in writing that he or she is required to attend a second stage meeting. The notification will state:

a. the details of the procedures for determining the date and time of the meeting (see paragraph 3.133);

b. a summary of the reasons why the line manager considers the police officer's performance or attendance unsatisfactory;

c. the possible outcomes of a second stage and third stage meeting;

d. that the line manager may attend the meeting;

e. that a human resources professional or a police officer (who should have experience of UPPs and be independent from the line management chain) may attend the meeting to advise the second line manager on the proceedings;

f. that if the police officer agrees, any other person specified in the notice may attend the meeting;

g. that prior to the meeting the police officer must provide the second line manager with any documentation he or she intends to rely on in the meeting; and

h. the police officer's rights i.e. his or her right to seek advice from a representative of his or her staff association (in the case of a member of the police force) and to be accompanied and represented at the meeting by a police friend.

3.128. The notice must also include copies of related documentation relied upon by the line manager in support of the view that the police officer's performance or attendance continues to be unsatisfactory.

3.129. In advance of the meeting, the police officer must provide the second line manager with any documents on which he or she intends to rely on in support of his or her case.

3.130. Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the second line manager. The purpose of allowing this discretion is to ensure fairness to all parties. However the presumption should be that such documents or other material will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable the second line manager or the police officer, as the case may be, to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

3.131. The purpose of the meeting is to hear the evidence of the unsatisfactory performance or attendance and to give the police officer the opportunity to put forward his or her views. It will also be an opportunity to hear of any factors that are continuing to affect the police officer's performance or attendance and what the police officer considers can be done to address them.

3.132. The second line manager should explain that there is potentially a further stage to the procedures and that the maximum outcome of stage two is a final improvement notice. The second line manager will also explain that if the procedure is followed to the final stage, dismissal, a reduction in rank (in the case of a member of a police force and in performance cases only), redeployment to alternative duties or an extended improvement notice (in exceptional circumstances) are possible outcomes.

3.133. Wherever possible, the meeting date and time should be agreed between the second line manager and the police officer. However, where agreement cannot be reached the second line manager must specify a time and date. If the police officer or his or her police friend is not available at the date or time specified by the second line manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that specified by the second line manager, the meeting must be postponed to that time.

3.134. Once a date for the meeting is fixed, the second line manager should send to the police officer a notice in writing of the date, time and place of the second stage meeting.

<u>At the second stage meeting</u>

3.135. At the second stage meeting the second line manager will:

a. explain to the police officer the reasons why he or she has been required to attend a second stage meeting;

b. provide the police officer with the opportunity to make representations in response;

c. provide the police officer's police friend (if he or she has one) with an opportunity to make representations (see Role of Police Friend); and

d. listen to what the police officer (and/or his or her police friend) has to say, ask questions and comment as appropriate;

3.136. The second line manager may adjourn the meeting at any time if he or she considers it is necessary or expedient to do so. An adjournment may be appropriate where information which needs to be checked by the line manager emerges during the course of the meeting or the manager decides that he or she wishes to adjourn the meeting whilst he or she makes a decision.

3.137. Where the line manager finds that the performance or attendance of the police officer has been satisfactory during the period in question, he or she will inform the police officer that no further action will be taken.

3.138. Where, having considered any representations by either the police officer and/ or his or her police friend, the second line manager finds that the performance or attendance of the police officer has been unsatisfactory (either during the period specified in the written improvement notice or during the validity period of the written improvement notice) he or she shall:

a. inform the police officer in what respect (s) his or her performance or attendance is considered unsatisfactory;

b. inform the police officer of the improvement that is required in his or her performance or attendance;

c. inform the police officer that, if a sufficient improvement is not made within the period specified by the second line manager , he or she may be required to attend a third stage meeting.

d. inform the police officer that he or she will receive a final written improvement notice; and

e. inform the police officer that if the sufficient improvement in his or her performance or attendance is not maintained during the validity period of such notice, he or she may be required to attend a third stage meeting.

3.139. It is expected that the specified period for improvement would not normally exceed 3 months. However, depending on the nature and circumstances of the matter, it may be appropriate to specify a longer or shorter period for improvement (but which should not exceed 12 months). In determining the specified period of an improvement notice, consideration should also be given to any periods of known extended absence from the police officer's normal role.

Procedure following the second stage meeting

3.140. As soon as reasonably practicable following the meeting, the second line manager will cause to be prepared a written record of the meeting and, where he or she found at the meeting that the performance or attendance of the police officer was unsatisfactory, a final written improvement notice. The written record and any improvement notice shall be sent to the officer as soon as reasonably practicable after they have been prepared. The written record supplied to the police officer should comprise a summary of the proceedings at that meeting.

3.141. The written improvement notice must set out the information conveyed to the police officer, state the period for which it is valid, and be signed and dated by the second line manager. Any improvement notice must be accompanied by a notice informing the police officer of his or her right to appeal and the name of the person to whom the appeal should be sent. The notice must also inform the police officer of his or her right to submit written comments on the written record of the meeting and of the procedure for doing so.

3.142. The police officer may submit written comments on the written record not later than the end of 7 working days after the date that he or she received it (unless an extension has been granted by the second line manager following an application by the police officer). Any written comments provided by the police officer should be retained with the note. However, if the police officer has exercised his or her right to appeal against the finding or outcome of the second stage meeting, the police officer may not submit comments on the written record.

3.143. It is the responsibility of the second line manager to ensure that the written record, written improvement notice and any written comments of the police officer on the written record are retained together and filed in accordance with force policies.

3.144. Normally it will also be appropriate to incorporate an action plan (see paragraph 3.79) setting out the actions which may assist the police officer to perform his or her duties to an acceptable standard e.g. attending training courses or a recommendation that the police officer seek welfare or medical advice. If possible the action plan should be agreed, either at the UPP meeting or at a later time specified by the line manager. It is expected that the police officer will co-operate with implementation of the action plan and take responsibility for his or her own development or improvement. Equally, the police officer's managers must ensure that any actions to support the police officer to improve are implemented.

Assessment of performance or attendance

3.145. It is expected that the police officer's performance or attendance will be actively monitored against the improvement notice and, where applicable, the action plan by the line manager throughout the specified period of the final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards his or her performance or attendance and offer advice and guidance where appropriate.

3.146. As soon as reasonably practicable after the specified period of the improvement notice comes to an end, the line manager, in consultation with the second line manager or an HR professional (or both), must formally assess the performance or attendance of the police officer during that period.

3.147. If the line manager considers that the police officer's performance or attendance is satisfactory, the line manager should notify the police officer in writing of this. The line manager must also notify the police officer that whilst the performance or attendance of the police officer is now satisfactory, the final improvement notice is valid for a period of 12 months from the date printed on the notice so that it is possible for stage three of the procedures to be initiated if the performance or attendance of the police officer falls below an acceptable level within the remaining period.

3.148. If the line manager considers that the police officer's performance or attendance is still unsatisfactory, the line manager should notify the police officer in writing of this. The notification should also inform the police officer that he or she is required to attend a third stage meeting to consider these ongoing performance or attendance issues.

3.149. If the police officer has improved his or her performance or attendance to an acceptable standard within the specified improvement period, but then fails to maintain that standard within the 12 month validity period, it is open to the line manager to initiate stage three of the procedures.

3.150. In such circumstances the line manager must notify the police officer in writing of his or her view that the police officer's performance or attendance is unsatisfactory as he or she has failed to maintain a sufficient improvement and that as a consequence the police officer is required to attend a third stage meeting to discuss this failure to maintain a satisfactory standard of performance or attendance.

Second stage appeals

3.151. A police officer has a right of appeal against the finding and the terms of the improvement notice imposed at stage two of the UPPs and against the decision to require him to attend the meeting. However, any finding and outcome of this second stage meeting will continue to apply up to the date that the appeal is determined. Therefore where the police officer contests the finding or outcome, he or she should continue to follow the terms of the improvement notice and any accompanying action plan pending the determination of the appeal.

3.152. Any appeal should be made in writing to the senior manager within 7 working days following the day of the receipt of the improvement notice (unless the period is extended by the senior manager following an application by the police officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

Appeal grounds

3.153. The grounds for appeal are as follows:

a. that the finding of unsatisfactory performance or attendance is unreasonable;

b. that any of the terms of the improvement notice are unreasonable;

c. that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the terms of the improvement notice;

d. that there was a breach of the procedures set out in the Performance Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or the terms of the written improvement notice.

e. that the police officer should not have been required to attend the second stage meeting as the meeting did not concern unsatisfactory performance or attendance which was similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice that followed the first stage meeting.

3.154. On the basis of the above grounds of appeal, the police officer may appeal against the finding of unsatisfactory performance or attendance, the decision to require him to attend the second stage meeting or the terms of the written improvement notice, those being:

a. the respect in which the police officer's performance or attendance is considered unsatisfactory;

b. the improvement which is required of the police officer;

c. the length of the period specified for improvement by the second line manager at the second stage meeting.

3.155. The police officer has the right to be accompanied and represented by a police friend at the second stage appeal meeting.

3.156. Wherever possible, the meeting date and time should be agreed between the senior manager and the police officer. However, where agreement cannot be reached the senior manager must specify a time and date. If the police officer or his or her police friend is not available at the date or time specified by the manager, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that specified by the senior manager, the meeting must be postponed to that time.

3.157. Once a date for the meeting is fixed, the senior manager should send to the police officer a notice in writing of the date, time and place of the second stage appeal meeting together with the information required to be provided under Regulation 26 of the Performance Regulations.

At the second stage appeal meeting

3.158. At this meeting the senior manager will:

a. provide the police officer with the opportunity to make representations;

b. provide his or her police friend (if he or she has one) with an opportunity to make representations (See Role of Police Friend).

3.159. Having considered any representations by either the police officer and/ or his or her police friend, the senior manager may:

a. make a finding that the officer should not have been required to attend the second stage meeting, and reverse the finding made at that meeting;

b. confirm or reverse the finding of unsatisfactory performance or attendance;

c. endorse or vary the terms of the improvement notice.

3.160. The senior manager may deal with the police officer in any manner in which the second line manager could have dealt with him or her at the second stage meeting.

3.161. Within 3 working days of the day following the conclusion of the appeal meeting, the police officer will be given written notice of the senior manager's decision. If the senior manager is in a position to send a written summary of the reasons for that decision, then this may also accompany the written notice of the decision.

3.162. However, where the senior manager sends only the written notice of the decision to the police officer, as soon as reasonably practicable after the conclusion of the meeting, he or she will send a written summary of reasons for that decision.

3.163. Any decision made that changes the finding or outcome of the second stage meeting will take effect by way of substitution for the finding or terms appealed against and as from the date of the second stage meeting.

The Third Stage

Preparation and purpose

3.164. With the exception of gross incompetence cases (see paragraph 3.171), initiation of the third stage must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

3.165. Where, at the end of the period specified in the final written improvement notice, the line manager finds that the police officer's performance or attendance has not improved to an acceptable standard during that period or that the police officer has not maintained an acceptable level of performance or attendance during the validity period of the notice, then the line manager must notify the police officer in writing that he or she is required to attend a third stage meeting to discuss these issues. As soon as reasonably practicable thereafter, the senior manager must give a notice to the officer informing him:

a. that the meeting will be with a panel appointed by the appropriate authority;

b. the procedures for determining the date and time of the meeting (see paragraphs 3.196 and 3.197);

c. a summary of the reasons why the police officer's performance or attendance is considered unsatisfactory;

d. the possible outcomes of a third stage meeting (see paragraph 3.169)

e. that an HR professional or a police officer (who should have experience of UPPs and be independent from the line management chain) may attend to advise the panel on the proceedings;

f. that counsel or a solicitor may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;

g. where the police officer is a special constable, inform him or her that a member of the special constabulary will attend the meeting to advise the panel (see paragraphs 3.192 to 3.195);

h. that if the police officer agrees, any other person specified in the notice may attend e.g. a person attending for development reasons; and

i. the police officer's rights i.e. his or her right to seek advice from a representative of his or her staff association (in the case of a member of the police force) and to be accompanied and represented at the meeting by a police friend[7].

3.166. The notice must also include copies of related documentation relied upon by the line manager in support of the view that the police officer's performance or attendance continues to be unsatisfactory. It is important to note that a third stage meeting may not take place unless the officer has been notified of his right to representation by a police friend.

3.167. The notice does not at this stage need to give the names of the panel members as these may not be known at the time of issue. However, as soon as the panel has been appointed by the appropriate authority, the appropriate authority should notify the police officer of the members' names. (For details of panel membership and procedures, see paragraphs 3.180 to 3.187).

3.168. The purpose of the meeting is for the panel to hear the evidence of the unsatisfactory performance or attendance and to give the police officer the opportunity to put forward his or her views. It will also be an opportunity to hear of any factors that are continuing to affect the police officer's performance or attendance and what the police officer considers can be done to address them.

3.169. Where the police officer has reached stage three following stages one and two (i.e. not a gross incompetence meeting), the possible outcomes of this stage three meeting are as follows:

a. redeployment;

b. reduction in rank (in the case of a member of a police force and for performance cases only);

c. dismissal (with a minimum of 28 days' notice); or

d. extension of a final improvement notice (in exceptional circumstances)

[7] A third stage meeting cannot not take place unless the police officer concerned has been notified of his or her right to be represented by a police friend.

3.170. Where the panel grants an extension to the final improvement notice, they will specify a new period within which improvement to performance or attendance must be made. The 12 month validity period of the extended final improvement notice will apply in full from the date of extension. The panel may also vary any of the terms in the notice.

Gross incompetence third stage meetings

3.171. There may be exceptional circumstances where the appropriate authority[8] considers the performance (not attendance) of the police officer to be so unsatisfactory as to warrant the procedures being initiated at the third stage. This would be as a result of a single incident of "gross incompetence". It is not envisaged that an appropriate authority would initiate the procedures at the third stage in respect of a series of acts over a period of time.

3.172. "Gross incompetence" is defined in the Performance Regulations as:

> "…a serious inability or serious failure of a police officer to perform the duties of the rank or role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account shall be taken of the attendance of a police officer when considering whether he has been grossly incompetent."

3.173. Where the appropriate authority determines it is appropriate to initiate the procedures at this stage, then the police officer must be informed in writing that he or she is required to attend a third stage meeting to discuss his or her performance.

3.174. Where the appropriate authority has informed the police officer that he or she is to attend a third stage only meeting, it must, as soon as reasonably practicable, send the police officer a notice in writing which will include the following details:

a. that the meeting will be with a panel appointed by the appropriate authority;

b. the procedure for determining the date and time of the meeting;

c. a summary of the reasons why the police officer's performance is considered to constitute gross incompetence;

d. the possible outcomes of a third stage only meeting (see paragraph 3.179);

e. that an HR professional and a police officer (who should have experience of UPPs and be independent from the line management chain) may attend to advise the panel on the proceedings;

f. that counsel or a solicitor may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;

g. where the police officer is a special constable, inform him that a ,member of the special constabulary will attend the meeting to advise the panel (see paragraphs 3.192 to 3.195);

h. if the police officer agrees, any other person specified in the notice may attend e.g. a person attending for development reasons; and

[8] It should be noted that if the decision to initiate the gross incompetence part of the procedures is delegated by the appropriate authority, that decision must be authorised by a senior police officer.

i. the police officer's rights: his or her right to seek advice from a representative of his or her staff association (in the case of a member of the police force) and to be accompanied at the meeting by a police friend.

3.175. In addition, the notice must also set out the effect of regulation 6 of the Performance Regulations.

3.176. The notice must be accompanied by the documentation relied upon by the appropriate authority in support of its view that the police officer's performance constitutes gross incompetence.

3.177. The notice does not have to give the names of the panel members at this stage as these may not be known at the time of issue. However, as soon as reasonably practicable after the panel has been appointed by the appropriate authority, it should notify the police officer of the members' names.

3.178. The purpose of the meeting is for the panel to hear the evidence of the gross incompetence and to give the police officer and his or her representative the opportunity to make representations on the matter.

3.179. The appropriate authority will explain that the police officer is required to attend the third stage meeting and that the possible outcomes of the stage three meeting are:

a. redeployment to alternative duties;

b. the issue of a final written improvement notice;

c. reduction in rank (with immediate effect);

d. dismissal (with immediate effect) or;

e. the issue of a written improvement notice (if the panel considers that there has been unsatisfactory performance and not gross incompetence).

Panel membership and procedure

3.180. The panel will comprise a panel chair and two other members and be appointed by the appropriate authority of the force in which the police officer is a police officer. At least one of the three panel members must be a police officer and one should be an HR professional. Membership will be as follows:

a. **1st panel member (chair):** Senior police officer;[9] or Senior HR professional (see paragraph 3.182).

b. **2nd panel member:** Police officer of at least the rank of superintendent; or HR professional who in the opinion of the appropriate authority is at least equivalent to that rank.

c. **3rd panel member:** Police officer of at least the rank of superintendent; or police staff member who in the opinion of the appropriate authority is at least equivalent to that rank.

3.181. None of the panel members should be junior in rank to the police officer concerned i.e. they must be of at least the same rank or equivalent (in the opinion of the appropriate authority).

[9] "senior police officer" means a police officer holding a rank above that of chief superintendent.

3.182. For the purposes of chairing a third stage meeting, the Performance Regulations define a "senior HR professional" as:

> "…a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to be a panel chair".

3.183. The panel chair should be senior in rank (or, in the opinion of the appropriate authority, is senior in rank) to the police officer concerned.

3.184. The appropriate authority may appoint police officers or police staff managers from another police force to be members of a panel.

3.185. No panel member should be an interested party i.e. a person whose appointment could reasonably give rise to a concern as to whether he or she could act impartially under the procedures.

3.186. As soon as the appropriate authority has appointed a third stage panel, it should arrange for copies of all relevant documentation to be sent to those members. In particular, any document:

a. that was available to the line manager in relation to any first stage meeting;

b. which was available to the second line manager in relation to any second stage meeting;

c. which was prepared or submitted in advance of the third stage meeting;

d. which was prepared or submitted following those meetings i.e. improvement notices, action plans and meeting notes;

e. relating to any appeal.

3.187. As soon as the appropriate authority has appointed a third stage panel, it must send the police officer written confirmation of the names of panel members.

Objection to panel members

3.188. The police officer has the right to object to any panel members appointed by the appropriate authority and any such objection must be made in writing to the appropriate authority no later than 3 working days after receipt of the notification of the names of the panel members. The police officer must include the ground of his or her objection to a panel member (s) in that submission.

3.189. The appropriate authority must inform the police officer in writing whether it upholds or rejects an objection to a panel member.

3.190. If the appropriate authority upholds the objection, a new panel member will be appointed as a replacement. As soon as practicable after any such appointment, the police officer will be informed in writing of the name of the new panel member. The appropriate authority must ensure that the requirements for the composition of the panel continue to be met.

3.191. The police officer may object to the newly appointed panel member in the same way as that described in paragraph 3.188 whereupon the appropriate authority must follow the procedure described above.

Special constables and third stage meetings

3.192. In cases where the police officer is a special constable, as indicated above, the force will appoint a member of the special constabulary to attend the meeting to advise the panel. This is for the purpose of fairness so that any significant differences between the role of a regular and special police constable and which may have a bearing on the police officer's performance or attendance can be taken into account.

3.193. The special constable advising the panel must have sufficient seniority and experience of the special constabulary to be able to advise the panel. The special constable advising the panel can be a police officer serving in a different force.

3.194. The special constable advisor will not form part of the panel and will not have a role in determining whether or not the police officer's performance or attendance is unsatisfactory.

3.195. In arranging a third stage meeting involving special constables, due consideration should be given to the fact that special constables are unpaid volunteers and may therefore have full time employment or other personal commitments.

Meeting dates and timeframes

3.196. Subject to paragraph 3.197, any third stage meeting should take place no later than 30 working days after the date that the notification described in paragraphs 3.165 to 3.167 as been sent to the police officer. Within that timeframe, wherever possible, the meeting date and time should be agreed between the panel chair and the police officer. However, where agreement cannot be reached the panel chair must specify a time and date. If the police officer or his or her police friend is not available at the date or time specified by the panel chair, the police officer may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that specified by the panel chair, the meeting must be postponed to that time.

3.197. If the panel chair considers it to be in the interests of fairness to do so, he or she may extend the 30 working day period within which the meeting should take place and the reasons for any such extension must be notified in writing to both the appropriate authority and the police officer.

3.198. As soon as a date for the meeting is fixed, the panel chair should send to the police officer a notice in writing of the date, time and place of the third stage meeting.

Procedure on receipt of notice of third stage meeting

3.199. Before the end of 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned, or, where that period is been extended by the panel chair for exceptional circumstances, such extended period, the police officer must provide to the appropriate authority:

3.200. a written notice of whether or not he or she accepts that his or her performance or attendance has been unsatisfactory or that he or she has been grossly incompetent, as the case may be;

3.201. where he or she accepts that his or her performance or attendance has been unsatisfactory or that he or she has been grossly incompetent, any written submission he or she wishes to make in mitigation;

3.202. where the police officer does not accept that his or her performance or attendance has been unsatisfactory or that he or she has been grossly incompetent or where he or she disputes part of the matters referred to in the notice that he or she has received, he or she shall provide the appropriate authority with a written notice of:

a. the matters he or she disputes and his or her account of the relevant events; and

b. any arguments on points of law he or she wishes to be considered by the panel.

3.203. The police officer shall provide the appropriate authority and the panel with a copy of any document he or she intends to rely on at the third stage meeting.

Witnesses and evidence

3.204. Before the end of three working days following the officer's compliance with paragraph 3.199, the senior manager and the officer shall each supply a list of proposed witnesses or give notice that they do not have any witnesses. Where witnesses are proposed, this must be accompanied by brief details of their evidence. The officer should try and agree a list of witnesses with the senior manager.

3.205. Where agreement has not been reached as above, the officer shall send to the appropriate authority his or her list of witnesses.

3.206. As soon as reasonably practicable after any list of witnesses has been agreed or, in the case where no agreement could be reached, supplied to the appropriate authority, the appropriate authority must send the list(s) to the panel chair together with, in the latter case, a list of its proposed witnesses. The panel chair will consider the list of proposed witnesses and will determine which, if any, witnesses should attend the third stage meeting.

3.207. The panel chair can determine that persons not named in the list should attend as witnesses.

3.208. No witnesses will give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case he or she will:

a. in the case of a police officer, cause him or her to be ordered to attend the third stage meeting;

b. in any other case, cause him or her to be given notice that his or her attendance at the third stage meeting is necessary.

3.209. Such notices will include the date, time and place of the meeting.

3.210. Where a witness attends to give evidence then any questions to that witness should be made through the panel chair. This would not prevent the panel chair allowing questions to be asked directly if he or she feels that this is appropriate.

3.211. The documents or other material to be relied upon at the meeting are required to be submitted in advance. Any document or other material that was not submitted in advance of the meeting may be considered at the meeting at the discretion of the panel chair. The purpose of allowing this discretion is to ensure fairness to all parties. However, the presumption should be that such documents or other material will not be permitted unless it can be shown that they were not previously available to be submitted in advance or that they relate to mitigation following a finding of unsatisfactory performance or attendance that was contested by the police officer. Where such a document or other material is permitted to be considered, a short adjournment may be necessary to enable those present to read or consider the document or other material and consider its implications. The length of the adjournment will depend upon the case. A longer adjournment may be necessary if the material in question is complex.

At the third stage meeting

3.212. At the third stage meeting the panel chair will conduct the meeting and will:

a. explain to the police officer the reasons why he or she has been required to attend a third stage meeting;

b. provide the police officer with the opportunity to make representations in response;

c. where the case is one of gross incompetence and the police officer has opted for legal representation, provide the police officer's legal representative with the opportunity to make representations;

d. unless the police officer is entitled to be and has chosen to be legally represented, provide the police officer's police friend (if he or she has one) with an opportunity to make representations (see Role of Police Friend);

e. listen to what the police officer (and/or his or her police friend) has to say and ask questions as appropriate.

3.213. Having considered any representations by either the police officer and/ or his or her police friend or (where applicable) the police officer's legal representative, the panel will come to a finding as to whether or not the performance or attendance of the police officer has been unsatisfactory or whether or not his or her behaviour constitutes gross incompetence, as the case may be.

3.214. If there is a difference of view between the three panel members, the finding or decision will be based on a simple majority vote, but it will not be indicated whether it was taken unanimously or by a majority.

3.215. Where the panel make a finding of unsatisfactory performance or attendance or gross incompetence then before deciding on the appropriate outcome, the panel must have regard to the personal record of the officer concerned and any mitigation or references put forward on behalf of the officer. The panel must prepare (or cause to be prepared) their decision in writing. Where the panel have found that the police officer's performance or attendance has been unsatisfactory or that he or she has been grossly incompetent, the decision must also state their reasons and any outcome which they order. The panel may also have regard to the impact which dismissal and subsequent inclusion on the barred list would have on an individual who holds a dual role in policing i.e a special constable who is also a staff member.

3.216. As soon as reasonably practicable after the conclusion of the meeting, the panel chair shall send a copy of the decision to the police officer and the line manager. However, the police officer must be given written notice of the finding of the panel within 3 working days of the conclusion of the meeting.

3.217. Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence the copy of the decision sent to the police officer must also be accompanied by a notice informing him or her of the circumstances in which and the timeframe within which he or she may appeal to a police appeals tribunal.

3.218. Individuals who are dismissed after UPP will be included on the barred list. See Annex I.

Records

3.219. A verbatim record of the meeting should be taken. The police officer must, on request, be supplied with a copy of the record.

Postponement and adjournment of a third stage meeting

3.220. If the panel chair considers it necessary or expedient, he or she may direct that the third stage meeting should take place at a different time to that originally notified to the police officer.

3.221. The panel chair's alternative time may fall after the period of 30 working days specified in paragraph 3.196.

3.222. In the event that the panel chair postpones a third stage meeting he or she should notify the following relevant parties in writing of his or her reasons and the revised time and place for the meeting:

a. the police officer;

b. other panel members; and

c. the appropriate authority.

3.223. If the police officer informs the panel chair in advance that he or she is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the police officer to participate in the meeting by video link or other means.

3.224. In cases where the police officer is absent (for example through illness or injury) a short delay may be reasonable to allow him or her to attend. If this is not possible or any delay is considered not appropriate in the circumstances then the person(s) conducting the meeting/hearing may allow the police officer to participate by telephone or video link. In these circumstances a police friend will always be permitted to attend the meeting/hearing to represent the police officer in the normal way (and, in the case of a gross incompetence meeting, the police officer's legal representative where appointed).

Assessment of final and extended-final improvement notices issued at the third stage

3.225. Where the police officer has been issued with a final improvement notice or, in exceptional cases, the panel has extended a final improvement notice period, it is expected that the police officer's performance or attendance will be actively monitored by the line manager throughout the specified period of the final/ extended final improvement notice. The line manager should discuss with the police officer any concerns that the line manager has during this period as regards his or her performance or attendance and offer advice and guidance where appropriate.

3.226. As soon as reasonably practicable after the specified period of the final/ extended-final improvement notice comes to an end, the panel will assess the performance or attendance of the police officer during that period. The panel chair must then inform the police officer in writing of the panel's conclusion following assessment i.e. whether there has been sufficient improvement in his or her performance or attendance during the specified period. If the panel considers that there has been insufficient improvement the panel chair shall also notify the officer that he or she is required to attend another third stage meeting.

3.227. If, at the end of the validity period of the final/ extended-final improvement notice, the panel considers that sufficient improvement to the police officer's performance or attendance has not been made or maintained during this period, the panel chair will inform the police officer of the panel's assessment.

3.228. Any such notification to the police officer must also include notification that he or she is required to attend a further third stage meeting.

3.229. Where an officer is required to attend a further third stage meeting, the Regulations shall apply as if he were required to attend that meeting for the first time and following a second stage meeting.

3.230. As with the initiation of stages one and two for unsatisfactory performance or attendance, a further third stage meeting must relate to matters similar to or connected with the unsatisfactory performance or attendance or gross incompetence referred to in the final improvement notice extended or issued by the panel.

3.231. The panel should (where possible) be composed of the same persons who conducted the previous third stage meeting. However, there may be cases where re-constitution of the panel is either inappropriate or not possible. For example, original panel members may be on a career break or have left the force. In such circumstances the appropriate authority may substitute members as it sees fit subject to the requirements in the Regulations described in paragraph 3.180. As soon as reasonably practicable after the appointment of any new panel member (s), the police officer should be notified in writing of the changes in panel membership. The police officer will have the opportunity to object to any new panel member (s) subject to the restrictions set out in paragraphs 3.188 and 3.191.

3.232. A police officer may only be given an extension to a final improvement notice on one occasion. Therefore where the police officer is required to attend a reconvened third stage meeting and the panel find that the police officer's performance or attendance continues to be unsatisfactory, the only outcomes available to the panel are:

a. Re-deployment;

b. Reduction in rank (only for a member of a police force and in performance cases)[10]; or

c. Dismissal (with notice).

Assessment of improvement notices issued at the third stage

3.233. In cases where a police officer was issued with an improvement notice (as opposed to a final improvement notice) for unsatisfactory performance at a gross incompetence third stage meeting, that written improvement notice will be equivalent to a written improvement notice issued at a first stage meeting. In that case the procedure for assessing the performance of the police officer will be the same as that following the first stage. See paragraphs 3.106 to 3.112.

Third stage appeals

3.234. Following a third stage meeting, a police officer may be able to appeal to a police appeals tribunal. This is dealt with in Annex C.

3.235. However, any finding and outcome of the third stage meeting will continue to apply up to the date that the appeal is determined.

Other Matters

Management action and medical and attendance issues

3.236. Where absence is due to genuine cases of illness, either self certified or medically certified, the issue is one of capability and thus falls under the UPPs rather than the procedures relating to misconduct. In such cases management should take a sympathetic and considerate approach, particularly if the absence is disability related and where reasonable adjustments in the workplace also need to be made which might enable the police officer to return to work.

[10] A reduction in rank may also involve re-deployment to alternative duties.

3.237. On the basis of the occupational health advice, management should consider whether alternative work is available. If there is some doubt about the nature of the police officer's illness or injury, the police officer will be informed that he or she will be examined by a force medical adviser (FMA). If the police officer refuses, he or she will be told in writing that a decision on whether he or she is subject to UPPs will be taken on the basis of the information available. The above will be applied in accordance with forces' own managing attendance procedures.

3.238. In accordance with local force attendance management procedures, the line manager and the police officer should keep in regular contact. If management wish to contact the police officer's doctor, normal force arrangements will be followed.

3.239. The police officer should be made aware at the start of the UPPs that if he or she remains unwell and if necessary adjustments cannot be made dismissal from the force is a possible outcome at stage three.

3.240. For further guidance on sickness and absence matters, see separate guidance on attendance management (CHAPTER 4).

Attendance at each stage of the procedures and ill-health

3.241. Attendance at any stage meeting is not subject to the same considerations as reporting for duty and the provisions of Regulation 33 (sick leave) of the Police Regulations 2003 do not apply. An illness or disability may render a police officer unfit for duty without affecting his or her ability to attend a meeting. However, if the police officer is incapacitated, the meeting may be deferred until he or she is sufficiently improved to attend.

3.242. A meeting will not be deferred indefinitely because the police officer is unable to attend, although every effort should be made to make it possible for the police officer to attend if he or she wishes to be present. For example:

a. the acute phase of a serious physical illness is usually fairly short-lived, and the meeting may be deferred until the police officer is well enough to attend;

b. if the police officer suffers from a physical injury – a broken leg - for instance, it may be possible to hold the meeting at a location convenient to him or her.

3.243. Where such circumstances apply at a stage three meeting, the force may wish to consider the use of video, telephone or other conferencing technology.

3.244. Where, despite such efforts having been made and/or the meeting having been deferred, the police officer either persists in failing to attend the meeting or maintains his or her inability to attend, the person conducting the meeting will need to decide whether to continue to defer the meeting or whether to proceed with it, if necessary in the absence of the police officer. The person conducting the meeting must judge the most appropriate course of action. Nothing in this paragraph should be taken to suggest that, where a police officer's medical condition is found to be such that he or she would normally be retired on medical grounds the UPPs should prevent or delay retirement.

Medical retirement under police pension legislation

3.245. The Police Pensions Regulations 1987 in relation to the Police Pension Scheme and the Police Pensions Regulations 2006 in relation to the New Police Pension Scheme provide that where a local policing body is considering whether a police officer is permanently disabled it shall refer the issue to the selected medical practitioner (SMP) for a decision.

3.246. Some cases of unsatisfactory attendance may raise the need to consider whether the police officer is permanently disabled within the meaning of the Police Pension Regulations 1987 or 2006. In such cases, this guidance should be read in conjunction with the PNB Joint Guidance on Improving the Management of Ill-Health.

3.247. Where a police officer is referred to the SMP for consideration of permanent disablement under the Police Pensions Regulations, no action shall be commenced or continued under the Performance Regulations with regard to the unsatisfactory attendance of a police officer until the issue of permanent disablement has been considered and the report of the SMP has been received by the local policing body.

3.248. Where a police officer appeals to a Medical Appeal Board against a decision of the SMP that he or she is not permanently disabled or to a Crown Court against a decision of the local policing body not to refer the permanent disablement questions to a SMP, no action shall be commenced or continued under the Performance Regulations with regard to the unsatisfactory attendance of the police officer until the appeal has been resolved.

3.249. Action can, however, be taken under the UPPs where a case has been referred or is the subject of appeal if the unsatisfactory attendance is unrelated to the condition forming the basis of the referral or appeal. However, forces must be confident that there is no connection as a decision to proceed in such circumstances may be challenged in the courts or tribunals. If the appropriate manager is unsure whether any condition forming the basis of a referral to the SMP or an appeal to either a Medical Appeal Board or Crown Court is related to the unsatisfactory attendance of a police officer, then advice should be sought from the HR professional acting on behalf of the local policing body before any decision is taken to commence or continue the UPPs. Medical advice from the force medical advisor (FMA) may also be necessary.

3.250. For further guidance on medical retirement procedures, see:

http://www.ome.uk.com/Document/Default.aspx?DocumentUid=516068B4-40A6-4AF6-ACCE-E0AEDC8A6768

http://www.lge.gov.uk/lge/aio/53547

Retirement under regulation A19 of the Police Pensions Regulations 1987 and regulation 20 of the Police Pensions Regulations 2006 and the 30+ and 30+ PLUS schemes

3.251. Regulation A19 of the Police Pensions Regulations 1987 provides for the compulsory retirement of police officers who have built up 30 years of pensionable service (and are entitled to an immediate full pension) where retention of a police officer would not be in the general interests of force efficiency. Similarly, regulation 20 of the Police Pensions Regulations 2006 provides for the compulsory retirement of those police officers who are members of the new 2006 Police Pension Scheme, and can be retired immediately with a full pension, on the same grounds.

3.252. These Regulations should not to be used to remove a police officer in situations of unsatisfactory performance or attendance where there is no issue of wider force efficiency. The UPPs should be used in such cases.

3.253. UPPs can also be used where police officers have resumed service under the 30+ and 30+ PLUS schemes and where a termination of office under regulation A19 or regulation 20 is not appropriate (as above).

3.254. For detailed guidance on the Police Pension Regulations and 30+ and 30+ PLUS schemes, see:

http://www.npia.police.uk/en/docs/30guidanceschemeguidance.pdf (30+ guidance)

http://www.npia.police.uk/en/15085.htm (30+ PLUS guidance)

Competency Related Threshold Payments

3.255. A finding or admission of unsatisfactory performance or attendance or gross incompetence at a UPP meeting will not automatically result in the removal of a police officer's competency related threshold payment. However, where a police officer has received an improvement notice or final improvement notice, this may trigger a review of the appropriateness of that police officer continuing to receive such payments. Any such review should take into account the qualifying criteria for payments under these schemes.

The use of records under UPPs

3.256. Records of any part of the UPPs should not be taken into account after an improvement notice has ceased to be valid. Equally, where a police officer appeals and that appeal is successful, the record of that procedure should not be taken into consideration in any future proceedings or for any other purpose.

Interaction with Police Complaints system

3.257. A police officer may be referred to an unsatisfactory performance meeting or stage 3 gross incompetence meeting as a result of a public complaint or conduct matter.

3.258. The Independent Police Complaints Commission (IPCC) has the power to recommend and ultimately direct that proceedings are taken under the Performance Regulations.

3.259. Where a case has been referred to a stage 3 meeting for gross incompetence as a result of an investigation of a public complaint or a conduct matter which was subject to local, supervised, managed or independent investigation then the complainant or interested person will be permitted to attend and remain in the meeting until the conclusion of the proceedings, after having given evidence (if appropriate). The complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

3.260. Where the officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the proceedings may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made. The right of the officer to object in this way should be drawn to their attention by the person conducting or chairing the proceedings.

3.261. The decision about whether to allow the complainant or interested person, or any person accompanying them to remain or not is a decision for the chair having considered representations made by the officer. If the panel chair is not minded to grant the officer's request immediately, the complainant/interested person should be asked to leave the room under the general power in regulation 40(13) of the Performance Regulations while the officer makes a submission giving reasons why such persons should be excluded while submissions are made in mitigation. If the complainant or interested person has been excluded, the person conducting or chairing the meeting must, subject to the need to keep them excluded for any other reason, invite them back into the meeting for the communication of the finding and the outcome of the proceedings.

3.262. The IPCC has the right to attend the proceedings to make representations in any case where an independent or managed investigation was undertaken, or where the IPCC made a recommendation or direction to the appropriate authority with regard to the proceedings.

3.263. In any case dealt with under the UPPs as a result of a public complaint or conduct matter the appropriate authority will have a duty to inform the complainant and interested persons of the outcome of those proceedings whether they attend or not.

CHAPTER 4

GUIDANCE ON ATTENDANCE MANAGEMENT

Introduction

4. The police service is committed to promoting a good attendance culture and a supportive working environment within police forces. This guidance on attendance management is issued by the Home Office with the full support of the Police Advisory Board for England and Wales.

4.1. The purpose of this guidance is to highlight the key principles that should guide police forces in developing good attendance management policies and practices.

4.2. While the guidance is not statutory, it is relevant to the application of the Performance Regulations. There is a clear expectation that forces will have in place an attendance policy that meets the standards set out in this guidance. Failure to have or to follow such a policy could be taken into account when decisions are being made, or appeals decided under the Unsatisfactory Performance Procedures (UPPs).

4.3. This guidance has been developed in conjunction with the police staff associations.

4.4. The Performance Regulations define unsatisfactory attendance as 'the inability or failure of a police officer to perform the duties of the role or rank he or she is currently undertaking to a satisfactory standard or level'. In this context, this would be due to absence during agreed hours of duty.

4.5. In the case of lateness, there will be a need to establish the reasons for the behaviour. Consideration should be given to whether the matter is properly dealt with under the attendance management policy or as an issue of personal misconduct.

Scope

4.6. This guidance covers an attendance management policy as it relates to police officers, including Special Constables. Arrangements are underway to develop a parallel document in relation to police staff. However, while acknowledging the differing employment status of officers and staff, the principles of effective attendance management set out here are generally applicable to both officers and staff, and forces may chose to develop a single policy to cover both officers and staff.

Key principles

4.7. All forces should have a clear policy on attendance management that is well-publicised and accessible to all.

4.8. There should be ownership of the policy at the chief officer level.

4.9. The policy should be developed in consultation with staff associations, force medical advisors, occupational health practitioners and health and safety advisors.

4.10. To maximise the likelihood of success, forces must adopt a positive, supportive and transparent approach to attendance management that does not unlawfully discriminate. Policies should be reviewed at stipulated regular intervals, the review to include an equality impact assessment.

4.11. Forces must place appropriate emphasis on the prevention of accidents and factors that cause or contribute to ill-health and take all reasonably practicable steps to safeguard the health, safety and welfare of all their officers.

4.12. All officers have a duty to have due regard to health, safety and welfare and to co-operate with their force arrangements in order to safeguard themselves and others[11].

4.13. There must be clear and effective communication in relation to attendance management, both generally and in individual cases.

4.14. Any decision to use the Unsatisfactory Performance Procedures (UPPs) to deal with poor attendance should be taken only after all supportive approaches have been offered in line with force policy.

4.15. Where the UPPs are invoked, the primary aim is to improve attendance. However, one available outcome of the UPPs is termination of service. Dismissal as a result of UPP will also carry the consequence of inclusion on the barred list.

Policy

4.16. Each Force must ensure it has in place formal policies and procedures setting out its approach to the management of attendance. These should be endorsed by chief officers. The policy should have clear aims and objectives. It is essential that these are communicated to all managers, officers and their representatives and steps taken to ensure that they are familiar with, and fully understand their responsibilities. Officers should have ready access to the policy and procedures.

4.17. The Chief officer should appoint a named individual at a senior level who takes the lead on attendance issues.

4.18. Staff associations have a key role in the development and review of attendance management policies and procedures.

4.19. The policy should set out clearly the force's expectations in respect of attendance management. Effective policies have the following features:

4.20. The policy and procedures should be monitored for effectiveness, and include a stated process and period for review. Publication of regular management reports on attendance management may assist in keeping attendance management in focus.

4.21. The policy demonstrates senior management's commitment to care for officer health, safety and welfare and to comply with all relevant legislation, using all available data to promote improvement and learning.

4.22. Support for officers to improve their attendance and assist those who are on sick leave to return to work.

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[11] 'General duties of employees at work
It shall be the duty of every employee while at work-
(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.'
Health and Safety at Work Act 1974 (as amended by the Police (Health and Safety) Act 1997), Section 7

4.23. Clarity on how information will be captured and recorded, locally and on a force wide basis; this should include the stated recording method. Given many Forces now operate a variety of shift patterns, the recording of absence in hours, as directed by the current Home Office Guidance on Statutory Performance Indicators, is critical in order that accurate comparisons can be made between Forces.

4.24. Whole organisation ownership, demonstrating effective communication and consultation process with the workforce

4.25. Transparent and non discriminatory application at all levels in the organisation and for all officers, whilst taking individual circumstances and requirements into account.

4.26. There will be clarity regarding roles and responsibilities of individual officers, line managers, human resource managers, occupational health practitioners, health and safety advisors and force medical advisors.

4.27. Forces must clearly set out the relationship of the attendance management policy with other Force policies which may have a link to health-related issues. These could include substance misuse; health promotion; Risk Assessment Based Medical Examination (RABME)[12]; Fairness at Work; dispute resolution; disability; maternity; and workplace stress policies and policies on work-life balance.

The Procedure

4.28. The procedure describes how the objectives of the policy will be achieved in practice, by setting the framework for management action to maintain and where appropriate, to improve attendance levels.

4.29. An attendance management procedure should seek to ensure the following outcomes:

a. The promotion of a healthy and safe working environment.

b. Consistent and transparent application to all officers, regardless of grade or rank, taking into account individual circumstances and requirements.

c. Levels of sickness absence are accurately recorded in line with Home Office guidance on a regular basis, with regular monitoring reports to be used locally and nationally.

d. Communication by forces to all officers on the organisation's objectives around attendance management.

e. Managers at all levels are fully aware of their responsibilities.

f. Defined levels of occupational health and other welfare support to be provided.

4.30. An effective procedure should contain the following features:

a. Clear processes for reporting periods of sickness absence, and reasons for absence, both at the start of the period of sickness and at defined periods thereafter.

b. Clear process for either self-certification or the provision of medical certificate(s)

c. Clear process for how lateness should be dealt with.

[12] http://www.npia.police.uk/en/9170.htm

d. Clear processes for reporting and recording injuries incurred on duty.

e. Clear process for maintaining contact during periods of absence.

f. Clear process for conducting return to work interviews and the development of rehabilitation and/or action plans to improve attendance.

g. Guidance on records to be kept regarding interviews and rehabilitation and/or action plans.

h. Guidance on the use of recuperative or restricted duties to encourage early and safe structured return to work.

i. Guidance on the recording of absence and action to be taken under special circumstances, e.g. where absence is maternity or disability related. Where absence is disability related separate records should be kept.

j. Whether, and if so, how, sickness absence will be a factor used in selection for training opportunities/postings/promotion. Where sickness absence is a factor, forces should ensure that this is compliant with other relevant force policies on issues such as disability and equality.

Managing Processes

4.31. Forces should take a proactive and supportive approach to managing absence, identifying and tackling any barriers to good attendance.

Short-term absence

4.32. Every instance of sickness absence should be considered in line with force procedures. Managers should seek to ascertain any underlying causes of absence, and take appropriate action to prevent absence from escalating further. Using every instance of sickness absence as an opportunity to review the health of the officer concerned is important and such review may prevent the sickness becoming more prolonged. Each review will also be an opportunity to consider whether there are any patterns of absence that give rise to any concern.

Long-term absence

4.33. Long term absence is defined as absence lasting 28 calendar days or more. Once an individual is absent from work for around 28 calendar days, regardless of their medical condition, their return to work can become more problematic, and there is a distancing from the workplace and work colleagues. It is of the utmost importance that clear arrangements are in place to maintain contact from an early stage in any absence.

Maintaining Contact

4.34. It is important that there are clear, locally published arrangements in place to maintain contact with officers who are absent for extended periods. Such arrangements should set out the purpose for the contact. This is likely to include ensuring medical certificates are regularly supplied and access to internal services such as counselling and rehabilitation are offered.

4.35. Line managers should maintain or facilitate regular contact with all officers absent on locally defined periods of sickness or long term absence throughout the period of absence and maintain a contact log.

4.36. Any arrangements should specify the nominated person who is responsible for ensuring contact is maintained.

4.37. Depending on the reason for absence and whether the officer is at home or in hospital, sensitivity will be required in ensuring that the appropriate level of contact is maintained. Phone calls, letters or regular Force newsletters could all be used. A balance needs to be struck between too much or too little contact as too much could be regarded as intrusive and bordering on harassment, whereas too little could be interpreted as not caring.

4.38. In rare cases it may be appropriate to have a person who is not in the officer's line management chain as the point of contact. For example, this could arise where the reported cause of the absence is due to management issues. Any Force procedure should ensure there is guidance on this point. Local arrangements should however make clear that the officer has a responsibility to provide the necessary medical certification and information on progress. The officer should also facilitate contact and co-operate with the advice and services provided by occupational health.

Facilitating Return to Work

4.39. Effective and sensitive management can be effective in facilitating the earliest possible safe return to work, especially in cases of extended sickness absence. Management, in consultation with occupational health, should make the officer's medical practitioners aware that the return to work can be phased, either by reducing hours at the start of the return or adjusting some of the tasks of the role to ensure no undue risk is placed on the officer concerned. Managers should ensure an appropriate 'risk assessment' is undertaken in such cases. Managers can be active in their support and encouragement for an early, safe return to work.

4.40. It is very likely that in these cases occupational health would have been involved at an earlier stage and their advice to managers is important. There may be some locally funded spend-to-save schemes which could facilitate private health care if undue NHS waiting times are being encountered.

4.41. The offer of a discussion with the officer and his or her representative may assist in the return to work. Police officers are key in understanding their condition and how their role may be temporarily adjusted to facilitate a return to work.

Payment during sickness absence

4.42. It will be important at the appropriate time to inform the officer of the effect of annex K of the Secretary of State's determinations under regulation 28 of the Police Regulations 2003 and its implications for sick pay. This will be particularly important when the officer concerned is approaching the time when his or her pay may be reduced or removed, to ensure there is clarity regarding this point and where appropriate, application for discretion to extend the period for which a specific rate of pay is payable is made in good time[13].

Return to work interviews

4.43. Return to work interviews, conducted effectively, play a fundamental role in ensuring attendance is carefully and fairly managed. Such interviews should be conducted following a return to work after every period of unscheduled absence, even if the absence has been very short.

4.44. Return to work interviews should apply to all officers regardless of rank, and should be viewed by both the officer and the manager as positive. However there should be reference to the officer's overall

[13] PNB Circular 2005/1 at http://www.ome.uk.com/downloads/Circulars_2005.doc

sickness record, where this is appropriate, so there can be an open discussion regarding any patterns of absence or other issues affecting his or her ability to attend regularly, or a need for further intervention or support.

4.45. The return to work interview should:

a. Ensure that all documentation (such as medical certificates or self-certification) has been completed.

b. Discuss the reasons for absence in a non-confrontational way and whether the officer is able to undertake the full range of duties applicable to his or her role or develop a plan for recuperative duties. Where there is any doubt, the matter should be referred to occupational health for advice.

c. Consider whether, if appropriate, an adjustment could be made to an officer's working environment to enable him or her to return to work.

d. Provide the opportunity for the officer to indicate any areas of concern that may have contributed to his or her period of absence.

e. Where appropriate, update the officer on any matters of significance that have occurred in his or her period of absence; this should cover both his or her own work, and that of the team.

f. Be conducted sensitively and in a manner that enables any particular circumstances to be dealt with.

4.46. Records of return to work interviews must be securely stored in line with general policies on officer data and in accordance with the Data Protection Act 1998.

Disability

4.47. The decision as to whether or not an officer is disabled under the Equality Act 2010 is ultimately a matter for an Employment Tribunal to decide. However, whether an officer is disabled under the Act should not be the overriding principle in the process of deciding whether to make reasonable adjustments. If a Force considers that an officer may be disabled for the purpose of the Equality Act, then it is good practice to treat him or her as such.

Recuperative duties

4.48. A phased return to work using recuperative duty arrangements can aid an early return to work. Recuperative duties should be used when there is the expectation that an officer will return to full duties upon his or her recovery. They are appropriate as a time-limited measure based on individual circumstances to enable officers to re-integrate into the workforce following a period of sick leave or injury. Any change to tasks should be temporary and a measured increase to return to normal hours and tasks should be actively managed and achieved in the shortest possible time.

Restricted duties

4.49. Where the condition is likely to be permanent, a return to work on the basis of restricted duties should be considered. Restricted duties are used in order to retain the skills and expertise of police officers and prevent unnecessary and costly early retirement. Police officers who are performing restricted duties are working full hours, as the restriction is predominantly based upon the type of work an officer can perform rather than the hours worked. This work should utilise their police skills and experience.

Ill-health retirement

4.50. There will be occasions where the medical condition causing the absence will be very serious and potentially with a permanent effect. In such cases the issues of whether the officer is 'permanently disabled' within the definition used in ill-health retirement guidance, will need to be considered.

Unsatisfactory Performance Procedures

4.51. Where supportive approaches have failed to improve attendance to acceptable levels, and ill-health retirement is inappropriate, it may be necessary to use the Unsatisfactory Performance Procedures (see Chapter 3).

Allocating responsibilities

4.52. Chief officers have responsibilities under the Health and Safety at Work etc Act 1974[14] and related legislation to protect officers whilst at work. If they are vulnerable to risk particularly if they have an illness, injury or disability, then human resources, health and safety practitioners and occupational health and welfare are the competent advisors.

4.53. It is the role of HR professionals to support sickness absence policies by providing advice and guidance to the line managers responsible for implementing the policies. This will include the provision of advice which takes into account the requirements of the Equality Act 2010 and HSE's Stress Management Guidance.

4.54. Occupational health practitioners should play a major role in evaluating reasons for absence, conducting health assessments, advising HR professionals and line managers in planning returns to work, and promoting good health.

4.55. All managers have a significant role to play by demonstrating their commitment to managing absence and making it a service priority.

4.56. The development of good practice in managing attendance is encouraged.

Role of Occupational Health

4.57. Occupational health has a role both in giving advice to managers to assist in taking managerial decisions and in supporting officers who seek their advice and assistance. Forces and local policing bodies should ensure that sufficient resources are available to provide a defined level of occupational health service.

4.58. Occupational health is responsible for providing advice on clinical issues affecting officers in the workplace, where this may be affecting performance or attendance. Where the force is required to conduct a risk assessment, officers can be required to co-operate with occupational health and/or health and safety advisors as part of the risk assessment process.

4.59. The Force should clearly define for all officers, the role and range of services they can expect from the occupational health service. It is vital that officers have confidence in the service and that managers are clear regarding the professional confidentiality requirements of occupational health practitioners.

4.60. Advice given to managers should be in a form which enables the manager to make a decision regarding the officer. Managers are responsible for making decisions regarding the officer informed by professional advice, including that provided by occupational health. A manager who has concerns about an

[14] As amended by the Police (Health and Safety) Act 1997

officer's health and the effect it may have on his or her ability to attend regularly and perform his or her normal tasks, may refer the officer to occupational health.

4.61. A manager should set out clearly the questions he or she wants occupational health to advise on, and should provide occupational health with information about the role the officer performs to enable the advice to be relevant. The following issues are examples of medical advice that may be requested. In addition managers should state the reasons for referrals and any management issues:

a. Is the officer fully fit for work in the particular role or are they subject to temporary or permanent limitations?

b. Are there any adjustments required and, if so, what is the nature of any adjustments that can be recommended to enable the officer to carry out his or her role?

c. Are there any issues affecting the workplace that are impacting on the officer's performance?

d. Is the condition one which could recur, and which may in the future affect effective attendance and performance?

e. How does the medical condition directly affect the role undertaken, i.e. what parts of the role can be undertaken and which cannot?

f. Does the impairment affect day-to-day activity?

g. Could the officer return to work on recuperative duties as a step to returning to full duties and if so what functional activities could be performed?

h. Is the condition such that a return on a restricted duty basis is an option and if so what functional activities are capable of being performed regularly?

i. Is there any equipment that could assist in a safe return to work?

j. Is time needed to undertake treatment/rehabilitation?

k. Does the officer's condition fall within the scope of the Equality Act 2010?

l. How long is the condition likely to last before a return to full duties?

m. Advice as to whether the condition is likely to require consideration of 'permanent disability' as defined in pension arrangements. If so, procedures covering pensions should be followed.[15]

4.62. Information given to managers by occupational health will not give the medical diagnosis as this is protected by medical confidentiality, but the impact of the condition on the officer's performance, capability and attendance will be identified, together with relevant timescales.

Health and Safety

4.63. The legal responsibility for assurance of proactive preventative measures rests with the Chief officer and the local policing body. As part of the requirement to provide a safe and healthy environment for all

[15] http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/27e87af1b5edbb3880256cfa003fd9d3?OpenDocument

officers, each Force will have to assess how it will meet those responsibilities. This should include an assessment of a range of proactive preventative measures to reduce the incidence of both physical and psychological ill-health where work may be a factor, for example, access to private health care may be an option available where NHS waiting lists are lengthy.

4.64. Such measures should be designed to support and promote an environment where safe systems of work are a natural feature. The introduction of a Risk Assessed Based Medical Examination (RABME) process may provide a useful structured approach, identifying posts where there may be higher risks to physical or psychological wellbeing, together with appropriate measures to reduce or mitigate such risks. Analysis of the major causes of absence should guide the delivery of service provision.

Training and Communication

4.65. All managers who are required to participate in any aspect of attendance management must have clarity about their responsibilities and have confidence in handling attendance management issues. In addition to providing ready access to the policies and procedures, attention should be given to ensuring there is competence in the necessary skills required to conduct all aspects of the process, for example conducting a return to work interview in a non-confrontational way and formulating risk assessment and rehabilitation plans.

4.66. All new officers should receive information regarding their individual responsibilities in the attendance management process as part of their induction.

4.67. The organisation should provide accessible regular updates when changes are introduced, and provide opportunity for clarification, while officers should take responsibility for familiarising themselves with information provided.

4.68. There should be appropriate training and available information in place to ensure that:

a. All parties are familiar with and understand the force's attendance management policy and procedure, and where it can be located.

b. All managers and officers understand the arrangements, including timescales for reporting sickness absence.

c. All managers and officers understand their responsibilities in relation to achieving and maintaining good attendance.

Monitoring Individual Progress

4.69. It is the responsibility of all managers, using the Force's attendance management arrangements and taking advice as necessary, to monitor their officers' attendance records.

4.70. Monitoring and recording absence accurately is essential if absence is to be managed effectively and fairly. Managers should keep a record of every absence of each officer reporting to them. Accurate records are the only way to identify when and where problems are occurring; they also provide a historical record for determining patterns of absence for individual officers and departments.

4.71. It is the responsibility of all officers to ensure that, in the case of sickness absence they comply with the reporting requirements of the attendance management procedures.

4.72. Nominated staff should be responsible for recording data at the start and end of periods of absence, in addition to the reasons for absence.

4.73. Managers should also keep written records of any action (or non action) taken in relation to their officers.

Reviews

4.74. Every instance of sickness absence is an opportunity for managers to take a proactive approach to examining the causes of absence and provide appropriate support.

4.75. Forces may also set locally defined and published review points, to assist managers in identifying patterns of absence and taking appropriate action.

4.76. Reviews are intended to act as a gateway to further management support or action, to ensure that officers are accessing all the necessary support to improve their attendance. This could include referral to occupational health, consideration of flexible working arrangements, and/or the involvement of a more senior manager.

4.77. Such reviews can provide a framework for consistent application of management intervention, but there is a need to ensure that these are not used rigidly without taking into account individual circumstances. Line managers should have the confidence and training to use their discretion in applying the policy[16]. While review points may be of assistance in identifying patterns or unusually high levels of absence, managers should not wait until a review point is reached before any action is taken. Similarly, based on their knowledge of a case, managers may choose not to take action, even where a review point has been reached.

4.78. The use of reviews should be non-discriminatory, regularly assessed, and subject to a full equality impact assessment.

Audit and Review

4.79. To be sure that an attendance management procedure is effective in achieving its stated objectives, there is a need to ensure that there is a robust and accurate information collection process, which provides realistic and simple information to enable managers to manage attendance in a timely and fair manner.

4.80. Monitoring information should be used as a positive tool to identify areas of concern and offer the opportunity for targeted improvement action where necessary. Monitoring information should form a regular input to Chief officer Review meetings and should also be scrutinised by the appropriate consultative committee. Care should always be taken to ensure that information that is made generally available does not identify individual officers and where significant factors are identified, review whether there are underlying issues that should be addressed.

4.81. Forces should introduce a structured monitoring regime to:

a. Measure the overall performance of the force in terms of absolute levels of sickness absence for all groups of officers. This can identify trends and indicate whether in overall terms the attendance management policy/procedures are effective in reducing absence and maintaining levels of attendance.

b. Identify whether the force is performing against national set targets and whether there is an improvement against the force's previous levels.

[16] http://www.hse.gov.uk/research/rrhtm/rr582.htm

c. Identify areas of low levels of absence which may indicate areas of good practice which could be shared.

d. Identify areas where there is a high level of absence, which may indicate inadequate management attention to the active management of absence, or roles which may be particularly hazardous.

e. Identify where the force appears to have predominantly short or long term absences and whether there are patterns of absence.

f. Measure the levels of sickness absence of different groups (e.g. gender, ethnicity, age, full or part time) in order to identify whether the force's procedure impact disproportionately on any group. The information should be factored into regular equality impact assessments of the policy.

g. Allow managers to see how their section is performing alongside other available workforce information.

4.82. The Home Office has developed a standard method of recording sickness absence, including definitions and criteria. This requires absence to be recorded in hours. These should always be used as it is necessary to supply the Home Office, quarterly, with information so it can prepare service wide monitoring information. Local policing bodies will also find the information useful when considering Force performance. Consideration should be given to benchmarking with other forces to assess relative performance. Forces may also find it helpful to consider the cost to the organisation of sickness absence.

4.83. In the collection of all data, forces must comply with their statutory requirements under the Data Protection Act 1998.

Annex A

FAST TRACK PROCEDURES (SPECIAL CASES)

Introduction

1.1 The following paragraphs provide guidance on the operation of the fast track misconduct procedures, referred to as "special cases" in the Conduct Regulations. Part 5 of the Conduct Regulations sets out the procedures for dealing with special cases.

1.2 The special case procedures can only be used if the appropriate authority certifies the case as a special case, having determined that the 'special conditions' are satisfied or if the IPCC has given a direction under paragraph 20H(7) of Schedule 3 to the 2002 Act.

1.3 The 'special conditions' are that –

(a) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities, that the conduct of the police officer concerned constitutes gross misconduct; and

(b) it is in the public interest for the police officer concerned to cease to be a police officer without delay.

1.4 These procedures are therefore designed to deal with cases where the evidence is incontrovertible in the form of statements, documents or other material (e.g. CCTV) and is therefore sufficient without further evidence to prove gross misconduct and it is in the public interest, if the case is found or admitted, for the police officer to cease to be a member of the police service forthwith.

1.5 Even where the criteria for special cases are met there may be circumstances where it would not be appropriate to certify the case as a special case, for instance, where to do so might prematurely alert others (police officers or non-police officers) who are, or may be, the subject of an investigation.

1.6 In the case of non senior officers the case will be heard by the police officer's Chief Constable (or equivalent ranks) or in cases where the Chief Constable is an interested party or is unavailable, another Chief Constable or an Assistant Commissioner. In the case of a senior officer, the case will be heard by a panel as set out in regulation 47 of the Conduct Regulations. The police officer will have a right of appeal under rule 4(1) of the Police Appeals Tribunal Rules 2012 to a Police Appeals Tribunal against any finding of gross misconduct and the disciplinary action imposed.

Complaint cases and conduct matters dealt with by local, supervised, managed or independent investigation

1.7 Where a matter that meets the criteria for using the special case procedures has arisen from a complaint by a member of the public, or a conduct matter which is subject to local, supervised, managed or independent investigation, the complainant or interested person will have the right to attend the special case hearing as an observer subject to any conditions imposed by the person conducting proceedings under regulation 52(3) of the Conduct Regulations.

1.8 Where a complainant or interested person is to attend a special case hearing he or she will be entitled to be accompanied by one other person and if the complainant or interested person has a special need, by one further person to accommodate that need.

1.9 A complainant or interested person and any person accompanying the complainant or interested person will be permitted to remain in the hearing up to and including the outcome. The complainant or interested person and any person accompanying the complainant or interested person may be excluded from the hearing whilst character references or mitigation are being given if the officer concerned objects to their presence. If the chair is not minded to immediately grant the officer's request, the complainant or interested person may be asked by the chair to leave the room while the officer makes a submission giving reasons why such persons should be excluded. However, the appropriate authority will have a duty (in cases investigated locally or supervised by the IPCC) to inform the complainant or interested person of the outcome of the hearing whether the complainant or interested person attends or not.

1.10 The IPCC may attend the special case hearing to make representations in any case which has been subject to a managed or independent investigation, or where the IPCC has recommended or directed a special case hearing in respect of a local or supervised investigation.

Evidence

1.11 There will be no oral witness testimony at the special case hearing other than from the police officer concerned. There will be copies of the notice given to the police officer, the certificate certifying the case as a special case, the notice the police officer has supplied in response, including any documents he or she provides in support of his or her case, a copy of the investigator's report or such parts of that report as relate to the police officer concerned, statements made by the police officer during the investigation, and in a case where the police officer concerned denies the allegation against him or her, copies of all statements and documents that in the opinion of the appropriate authority should be considered at the meeting.

Special case process

Procedure for consideration in advance of the meeting

1.12 Where the appropriate authority determines that the special conditions (see paragraph 1.3 above) are satisfied, unless it considers that the circumstances are such to make it inappropriate to do so, he, she or it shall certify the case as a special case and refer it to a special case hearing. The decision as to whether a case is suitable for using the fast track procedure will be taken by the appropriate authority which must determine whether it believes the special conditions are satisfied having regard to the available evidence and any other relevant information. The appropriate authority will be the local policing body in the case of a chief officer or the chief officer in the case of any other officer. If the chief officer delegates this decision, that decision must be authorised by a senior officer.

1.13 If the appropriate authority decides that the special case procedures will not be used then he, she or it will refer it back to the investigator if further investigation is required or to the appropriate authority to proceed under the standard procedures.

1.14 If the appropriate authority decides that the special case procedures should be used then he, she or it will sign a "Special Case Certificate" and will provide to the police officer concerned notice giving particulars of the conduct that is alleged to constitute gross misconduct and copies of: -

- the Special Case Certificate
- any statement the police officer may have made to the investigator during the course of the investigation

Subject to the harm test, :-

- the investigator's report (if any) or such parts of that report as relate to the police officer concerned, together with any documents attached to that report; and

- any relevant statement or documents gathered during the course of the investigation

1.15 The police officer concerned will also be told the date, time and place of the hearing and of his or her right to legal representation and to advice from a 'police friend'.

1.16 The date of the meeting will be not less than 10 working days and not more than 15 working days from the date the "Special Case Certificate" and other documents are provided to the police officer concerned.

1.17 Within 7 working days of the first working day after the day on which the written notice and documents are supplied to the police officer concerned, the police officer shall provide a written notice to the appropriate authority of –

- whether or not he or she accepts that his or her conduct constituted gross misconduct

- where he or she accepts that the conduct constituted gross misconduct, any submission he or she wishes to make in mitigation

- where he or she does not accept that the conduct constituted gross misconduct

(a) the allegations he or she disputes and his or her version of the relevant events; and

(b) any arguments on points of law he or she wishes to be considered by the person or persons conducting the meeting.

1.18 At the same time the police officer shall provide the person conducting or chairing (in the case of a senior officer) the hearing with copies of any documents he or she intends to rely on at the hearing (see regulation 45).

1.19 The Chief Constable or Assistant Commissioner (in the MPS) or Commissioner (in the case of the City of London Police) (or the chair of the hearing in the case of a senior officer) should be provided with the papers and it should be seen as good practice to provide them at least 3 working days prior to the hearing.

<u>Outcome of special case hearing</u>

1.20 Where the person(s) conducting the special case hearing find that the conduct of the police officer concerned constituted gross misconduct, then he, she or they shall impose disciplinary action, which may be:

a) Dismissal without notice. This outcome has the additional consequence of being included on the barred list.

b) A final written warning (unless a final written warning has been imposed on the police officer concerned within the previous 18 months).

c) an extension of a final written warning.

1.21 Where the police officer concerned has received a final written warning within the 18 months prior to the assessment of the conduct then in exceptional circumstances only, the final written warning may be extended by a further 18 months. An extension of a final written warning can occur on one occasion only.

1.22 Where the person(s) conducting the hearing determines that the conduct does not amount to gross misconduct, then he, she or they may dismiss the case.

1.23 Alternatively, he, she or they may return the case to the appropriate authority to deal with at a misconduct meeting or hearing (where there is a live final written warning) under the standard procedures. This may be because the person(s) conducting the hearing consider that the conduct is misconduct rather than gross misconduct.

1.24 There is power under regulation 42 for the appropriate authority to remit the case to be dealt with under the standard procedures at any time prior to the start of the special case hearing. This might be because he, she or it considers that a particular witness whose evidence is crucial to the case and is disputed must be called to give oral testimony.

1.25 Where the police officer admits the allegation or the person(s) conducting the hearing find it proved on the balance of probabilities, then the person(s) conducting the hearing –

a) shall have regard to the record of police service of the police officer concerned as shown on his or her personal record;

b) may consider such documentary evidence as would, in his, her or their opinion, assist him, her or them in determining the question; and

c) shall give the police officer concerned, and his or her police friend or relevant lawyer, an opportunity to make oral or written representations.

1.26 The police officer concerned shall be informed of the finding and any disciplinary action imposed or a decision to dismiss the case or revert it back to be dealt with under the standard procedures as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons within 5 working days beginning with the first working day after the conclusion of the hearing.

1.27 The chair of the special case hearing may make recommendations to the appropriate authority as to the publication of information on the barred list, if the outcome is dismissal. They should make these representations with reference to the exemptions to publication set out in Annex I.

<u>Absence of police officer concerned at the hearing</u>

1.28 The hearing may proceed in the absence of the police officer concerned, but the person(s) conducting the hearing should ensure that the police officer concerned has been informed of his or her right to be legally represented at the hearing or to be represented by a police friend where the police officer chooses not to be legally represented.

Annex B

MISCONDUCT MEETINGS/HEARINGS - SENIOR POLICE OFFICERS

1.1 This section sets out the persons who will hear a misconduct case involving a senior police officer that has been referred to either a misconduct meeting or misconduct hearing.

Misconduct Meeting/Hearings

1.2 Where a case is referred to a misconduct meeting or hearing the misconduct proceedings shall be conducted by the following panel of persons appointed by the appropriate authority: -

(i) a legally qualified person who shall be the chair[17];

(ii) HMCIC or an inspector of constabulary nominated by HMCIC; and

(iii) a person selected from a list of candidates maintained by a local policing body.

1.3 The senior officer concerned should be informed of the names of the persons appointed to conduct the misconduct meeting/hearing together with the name of any person appointed to advise such persons at the meeting/hearing as soon as reasonably practicable after they have been appointed.

1.4 The senior officer may object to any person hearing or advising at a misconduct meeting or hearing within 3 working days starting with the first working day after he or she was notified of the person's name. In doing so the senior officer concerned will need to set out clear and reasonable objections as to why a particular person(s) should not conduct or advise at the proceedings.

1.5 If the senior officer concerned submits a compelling reason why such a person should not be involved in the proceedings, a replacement should be found and the senior officer will be notified of the name of the replacement and the senior officer concerned will have the same right to object to that person. The senior officer concerned may object to a person(s) conducting a misconduct meeting or hearing or advising at such proceedings if, for example, the person(s) have been involved in the case in a way that would make it difficult to make an objective and impartial assessment of the facts of the case.

1.6 The chair of the misconduct proceedings shall, as soon as possible after the proceedings, submit a report to the appropriate authority, together with a copy to the senior officer concerned, setting out:-

(a) Whether or not misconduct or gross misconduct has been found against the senior officer concerned. This should include any relevant findings of fact.

(b) The reasons for that finding.

(c) If that finding was that the conduct of the senior officer concerned amounted to misconduct or gross misconduct (as the case may be), a recommendation as to any outcome which in the opinion of the panel should be imposed

(d) Any other matter arising out of the proceedings which it desires to bring to the notice of the appropriate authority.

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[17] A list of such legally qualified persons is maintained by the Home Office.

1.7 On receipt of the report the appropriate authority will hold a further meeting or hearing. The procedure for this further meeting or hearing is effectively the same as for any other meeting or hearing where outcome is to be decided – the relevant Conduct Regulations dealing with procedural requirements continue to apply. At the meeting or hearing the appropriate authority may record a finding that the conduct of the police officer concerned amounted to misconduct and take no further action or impose one of the outcomes listed at paragraph 2.271.a.ii of this guidance.

Orders to restrict or prohibit compensation payments to senior officers

1.8 The current arrangements for compensation for senior officers are not set out in Regulations or determinations made by the Secretary of State but are instead set out in Police Negotiating Board Circular 10/3: http://www.local.gov.uk/web/workforcelibrary/police-negotiating-board- circulars

1.9 The Circular provides for compensation to be payable where a Local Policing Body decides not to extend a chief officer's fixed term appointment or where they are required to resign in the interests of efficiency or effectiveness under sections 38(3), 39(5) and 40(4) of the Police Reform and Social Responsibility Act 2011.

1.10 Under regulations 35(12) and 55(11), where a senior officer is given a final written warning (or such a warning is extended) at a further misconduct hearing or special case hearing, the appropriate authority may make an order in relation to the compensation payable if that officer's fixed term of appointment is not extended or the officer is required to resign or retire before the expiry of the fixed term.

1.11 It is open to the person conducting the further meeting or hearing to make any such order as they see fit where the outcome given is a final written warning or an extension of a final written warning. Relevant considerations include:

a. the seriousness of the misconduct, including whether the outcome would have been dismissal in the absence of personal mitigation;
b. the extent to which the conduct could be seen as harmful to public confidence in the police or the police disciplinary system;
c. the extent to which the payment of compensation (or payment above a certain level) could harm public confidence in the police, given the disciplinary outcome.

1.12 Such an order may:

a. prohibit the payment of compensation to the officer concerned;
b. prohibit the payment of compensation above a specified amount; or
c. make provision as to the method by which the compensation is to be calculated.

1.13 Where a final written warning is cancelled as the result of an appeal to the Police Appeals Tribunal, any order made will also be cancelled.

Annex C

APPEALS TO POLICE APPEALS TRIBUNAL - POLICE APPEALS TRIBUNALS RULES 2012

Introduction

1.1 This guidance relates to appeals made to a Police Appeals Tribunal for matters that have been dealt with under the Conduct Regulations and the Performance Regulations.

1.2 Appeals made to a Police Appeals Tribunal that were dealt with under the Police (Conduct) Regulations 2008 or the Police (Performance) Regulations 2008 will be dealt with under the Police Appeals Tribunals Rules 2008. The previous edition of this guidance continues to apply in those cases, but regard should be had to the transitional provisions in the Police Appeals Tribunal Rules 2012 which set out the ways in which the 2008 Regulations are modified to reflect the replacement of police authorities by police and crime commissioners and the transfer of responsibility for senior officers to the chief officer of police.

1.3 For the purposes of this guidance the following terms will be used: -

- 'appellant' – The police officer who has submitted an appeal.

- 'respondent' – In the case of an appeal brought by a police officer other than the chief officer, the respondent will be the chief officer of that force. For chief officers the respondent is the local policing body for that force.

Scope

1.4 A police officer has a right of appeal to a Police Appeals Tribunal against any disciplinary finding and/or disciplinary outcome imposed at a misconduct hearing or special case hearing held under the Conduct Regulations. Senior police officers, in addition, have the right to appeal to a Police Appeals Tribunal against any disciplinary finding and/or outcome imposed at a misconduct meeting. A police officer may not appeal to a tribunal against a finding of misconduct or gross misconduct where that finding was made following acceptance by the officer that his or her conduct amounted to misconduct or gross misconduct (as the case may be). A police officer may not appeal against their inclusion on the barred list, only against the outcome which led to their inclusion. After a minimum period of time, officers who do not successfully appeal their case, will be able to use the separate review mechanism to apply to have their barred status removed. See Annex I.

1.5 A police officer of a rank up to and including chief superintendent has a right of appeal to a Police Appeals Tribunal against the finding and/or the following outcomes imposed following a third stage meeting under the Performance Regulations 2012: -

i) Dismissal; or

ii) Reduction in rank

1.6 In addition to the outcomes at (i) and (ii), if the case has been dealt with at a stage three meeting, without having progressed through stages 1 and 2, the police officer may appeal against the following outcomes: -

(a) redeployment to alternative duties

(b) the issue of a final written improvement notice

(c) the issue of a written improvement notice

1.7 A police officer may not appeal against a finding of unsatisfactory performance or attendance, or gross incompetence at a third stage performance meeting where that finding was made following acceptance by the officer that his or her performance or attendance has been unsatisfactory or that he or she has been grossly incompetent (as the case may be).

Composition and timing of Police Appeals Tribunals

1.8 The composition of a Police Appeals Tribunal is set out in Schedule 6 to the Police Act 1996 (as amended). Where the appeal is made by a police officer who is not a senior officer, the Tribunal appointed by the local policing body will consist of: -

a) a legally qualified chair drawn from a list maintained by the Home Office;

b) a serving senior officer; and

c) a retired member of a police force who was a member of an "appropriate staff association".

1.9 An "appropriate staff association" means if the appellant was of the rank of chief superintendent or superintendent, the Police Superintendents' Association of England and Wales. In any other case, it means the Police Federation of England and Wales.

1.10 Where the appellant is a senior officer, the Tribunal appointed by the Secretary of State will consist of:-

a) a legally qualified chair drawn from a list maintained by the Home Office;

b) HM Chief Inspector of Constabulary or an Inspector nominated by the Chief Inspector; and

c) the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.

1.11 A person should not sit on a Police Appeal Tribunal for a senior officer if they have already heard the same case at a misconduct meeting or misconduct hearing.

1.12 It is expected that a tribunal will take place as soon as reasonably practicable and in any case should take place no later than 3 months of the determination by a tribunal chair that a hearing should be held.

1.13 It will be the responsibility of the local policing body to satisfy itself that the members who are to sit on a Police Appeals Tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness. The serving senior officer on the Tribunal should not be from the same force as the appellant.

Grounds of appeal

1.14 A Police Appeals Tribunal is not a re hearing of the original matter; rather its role is to consider an appeal based on specific grounds.

1.15 In the case of matters dealt with under the Conduct Regulations the grounds for appeal are: -

a) that the finding or disciplinary action imposed was unreasonable; or

b) that there is evidence that could not reasonably have been considered at the misconduct meeting (in the case of senior police officers), the misconduct hearing or special case hearing (as the case may be); or

c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints Regulations, Schedule 3 to the 2002 Act or other unfairness which could have materially affected the finding or decision on disciplinary action.

1.16 In the case of matters dealt with under the Performance Regulations the grounds for appeal are: -

a) that the finding of unsatisfactory performance or attendance or gross incompetence, or the outcome imposed, was unreasonable; or

b) that there is evidence that could not reasonably have been considered at the third stage meeting which could have materially affected the finding or decision on the outcome; or

c) that there was a breach of the procedures set out in the Performance Regulations or other unfairness which could have materially affected the finding or decision on the outcome; or

d) where the police officer was required to attend a third stage meeting following a first and second stage meeting, that the police officer concerned should not have been required to attend that meeting as his or her unsatisfactory performance or attendance was not similar to or connected with the unsatisfactory performance or attendance referred to in his or her final written improvement notice.

Notice of appeal

1.17 Where a police officer wishes to appeal then he or she will need to give notice of his or her appeal in writing to the local policing body. The notice of appeal must be given within 10 working days, beginning with the first working day after the police officer is first supplied with a written copy of the decision that he or she is appealing against.

1.18 In cases where the police officer fails to submit his or her notice of appeal within the 10 working days period, he or she may, within a reasonable time after the end of that period, submit a notice of appeal which shall be accompanied by the reasons why it was not submitted within that period, and the reasons for the officer's view that it was served within a reasonable time after that period.

1.19 The local policing body will appoint a Police Appeals Tribunal chair to deal with the notice of appeal and any applications for extensions to the time limits.The same chair may, but need not, chair the tribunal that deals with the substantive appeal, if the matter proceeds to that stage.

1.20 Upon receipt of an appeal that has been submitted outside the 10 working day time limit, the local policing body shall send a copy of the notice and the reasons to a tribunal chair, who shall determine:

a) whether or not it was reasonably practicable for the notice to be given within the time limit, and

b) whether the notice was submitted within a reasonable time after the end of the 10 day period for submitting a notice of appeal.

1.21 Where the tribunal chair determines that it was reasonably practicable to have submitted the notice of appeal within the time limit or the chair determines that the notice was not submitted within a reasonable time after the end of the 10 day time limit, the appeal shall be dismissed. Where the tribunal chair determines that it was not reasonably practicable to have submitted the notice within

the 10 working day period and that the notice was given within a reasonable time after the end of that period, the appeal shall be allowed to proceed.

1.22 In his or her notice of appeal, the appellant may request a copy of all or part of the transcript of the original hearing.

1.23 The local policing body, upon receipt of a notice of appeal, shall, as soon as reasonably practicable, send a copy of the notice to the respondent and (where the appeal is a specified appeal[18]) to the Independent Police Complaints Commission (IPCC).

Procedure on notice of appeal

1.24 As soon as reasonably practicable after receipt of a copy of the notice of appeal and in any case within 15 working days (beginning with the first working day following the day of such receipt) the respondent shall provide to the local policing body: -

a) a copy of the decision appealed against (namely the written judgement of the original panel/person);

b) any documents that were available to the panel/person conducting the original hearing; and

c) the transcript or part of the transcript of the proceedings at the original hearing requested by the appellant

1.25 A copy of the transcript (if applicable) shall also at the same time be sent to the appellant.

1.26 The appellant, within 20 working days beginning with the first working day following the day on which he or she is supplied with a copy of the transcript or, where no transcript is requested, within 35 working days (beginning with the first working day following the day on which the appellant gave notice of his or her appeal), shall provide to the local policing body: -

a) a notice setting out the finding, disciplinary action or outcome appealed against and of his or her grounds for the appeal;

b) any supporting documents

c) where the appellant is allowed to call witnesses (for appeals made only on the ground of there being evidence that could not reasonably have been considered at the original hearing and which could have materially affected the finding or outcome): -

i) a list of any proposed witnesses; and

ii) a witness statement from each of the proposed witness

d) If he or she consents to the appeal being determined without a hearing (that is, on the basis of the papers alone), notice in writing that he or she so consents.

1.27 In relation to the appellant, a "proposed witness" is a person whom the appellant wishes to call to give evidence at the hearing, whose evidence was not and could not reasonably have been considered at the hearing and whose evidence could have materially affected the decision being appealed against.

[18] A specified appeal is one where the decision appealed against arose from a complaint or conduct matter to which paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied.

1.28 Not later than 20 working days, beginning with the first working day following the day on which the respondent receives the documents from the local policing body, the respondent shall send to the local policing body: -

a) a statement setting out the respondent's response to the appeal;

b) any supporting documents;

c) where the respondent is permitted to adduce witness evidence: -

i) a list of any proposed witnesses;

ii) a witness statement from each of the proposed witnesses; and

d) If he or she consents to the appeal being determined without a hearing (that is, on the basis of the papers alone), notice in writing that he or she so consents

1.29 The respondent should also send to the appellant, at the same time, a copy of the documents in (a),(c) and (d) above, together with a list of any documents submitted under (b).

1.30 The local policing body will send a copy of the papers submitted by the respondent and appellant to the tribunal chair appointed to deal with the notice of appeal as soon as practicable following receipt.

1.31 The respondent may only propose a witness to attend where the ground for appeal by the appellant is that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action or the outcome. In such cases the respondent may propose a witness who may give evidence to deal with the issue raised by the appellant. An example may be where the appellant submits new medical evidence that was not available to the original hearing and the respondent wishes to propose its own witness to give evidence on this issue.

1.32 In the event that the chair decides that there should be a hearing, and the appellant had consented to the matter being determined on the papers, the appellant is under no obligation to attend but is entitled to reconsider his or her position. The appellant may also reconsider his or her consent to the determination of the appeal on the basis of the papers prior to a determination on this issue by the chair. The appellant's withdrawal of consent should be notified to the local policing body in writing and if this occurs, a hearing must be held.

1.33 Where the appellant, having seen the documents sent in by the respondent, withdraws his or her consent to the matter being dealt with on the papers, a hearing must be held.

<u>Extension of time limits</u>

1.34 The appellant or the respondent can apply to the local policing body for an extension to the time limits stated above for providing documents (except the time for giving notice of appeal) setting out its reasons for the application and the additional time period it is seeking.

1.35 The local policing body will copy any application by the respondent or the appellant to the other party as soon as practicable after receipt and ask whether it consents to the application.

1.36 Where the other party consents to the application for more time then the local policing body shall extend the time to the agreed time limit. Where the other party does not consent then the local policing body will refer the matter to the tribunal chair who shall determine whether the relevant time period should be extended and if so for how long.

1.37 There is an expectation that the time limits will ordinarily be complied with and only in exceptional circumstances, for example due to the complexity of the case, will a time limit be extended.

Review of notice of appeal

1.38 Upon receipt of the documents submitted to him or her by the local policing body, the chair appointed to consider the notice of appeal shall determine whether the appeal should be dismissed at this stage. It is expected that the chair will normally make his or her preliminary determination within 10 working days of receiving the documents.

1.39 The tribunal chair will dismiss the appeal at this stage if he or she considers that: -

a) the appeal has no real prospect of success; and

b) there is no other compelling reason why the appeal should proceed.

1.40 Where the tribunal chair is minded to dismiss the appeal at this stage, he or she will notify the appellant and the respondent in writing of his or her view together with his or her reasons before making his or her final determination.

1.41 The appellant and the respondent may within 10 working days, beginning with the first working day after the day of being notified of the chair's preliminary view, make written representations to the chair and the chair will consider such representations before coming to his or her final decision.

1.42 The tribunal chair shall inform the appellant, respondent and local policing body of his or her final decision. It is expected that the tribunal chair's decision will be made and communicated within 10 working days of receipt of the last of the representations. Where the tribunal chair dismisses the appeal then the notification will include his or her reasons for doing do.

Determination of an appeal

1.43 Where the tribunal chair allows the appeal to go forward to a tribunal hearing then the local policing body will be responsible for making the administrative arrangements prior to and at the tribunal and for ensuring that the members of the tribunal appointed to deal with the appeal are sent the papers together with a schedule of the documents that each of the members should have.

1.44 The tribunal chair who made the determination as to whether to allow the notice of appeal to proceed to a tribunal need not necessarily be the same tribunal chair who hears the subsequent appeal. However, the chair who makes the decision as to whether the appeal should be dealt with at a hearing or on the papers should be the chair appointed to hear the appeal itself.

1.45 Where an appeal has not been dismissed at the review stage, the tribunal chair shall determine whether the appeal should be dealt with at a hearing. It is expected that this decision will be made by the tribunal chair within 10 working days of receiving the papers. If the appellant has not consented to an appeal being dealt with on the papers then a hearing shall be held. If the appellant has consented, the tribunal chair may determine that the appeal shall be dealt with without a hearing. If the appeal is to be dealt with at a hearing, the chair shall give the appellant and the respondent his or her name and contact address.

Power to request disclosure of documents

1.46 At any time after the appellant and respondent have submitted their respective documents, the appellant or respondent may apply to the tribunal chair for disclosure of any document by the other party which is relevant to the appeal.

1.47 The tribunal chair may request the disclosure of any such document and where it is disclosed, a copy shall be given to the tribunal chair and the requesting party.

1.48 Where the appellant or respondent does not comply with a request to disclose any document, then the appellant or respondent (as appropriate) shall give the tribunal chair and the other party their reasons for non-disclosure in writing.

1.49 The tribunal in making its determination of the appeal may take into account any non-disclosure of documents where the tribunal decides that the requested documents may have been relevant to the determination of the appeal.

Legal and other representation

1.50 The appellant can be represented at a hearing by a relevant lawyer or a police friend. Where the appellant is represented by a lawyer then the appellant's police friend may also attend. (See the section on 'Police friends' in the introduction to the Guidance).

1.51 The respondent may be represented at the hearing by a relevant lawyer, a police officer, the chief executive or other officer or employee of the relevant local policing body.

Procedure at hearing

1.52 Where the case is to be heard at a tribunal hearing, the chair of the tribunal shall cause the appellant and the respondent to be given written notice of the time, date and place of the hearing, at least 20 working days or such shorter period as may with the agreement of both parties be determined, before the hearing begins.

1.53 Subject to the rules set out in the Police Appeals Tribunal Rules 2012, the procedure at the tribunal shall be determined by the tribunal.

1.54 The tribunal chair will determine in advance of the tribunal whether to allow any witness that the appellant or respondent proposes to call to give evidence at the tribunal.

1.55 Witnesses will only be permitted where the ground for appeal is that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on outcome.

1.56 No witnesses shall give evidence at the hearing unless the chair reasonably believes that it is necessary for the witness to do so.

1.57 Any witness that does attend the tribunal may be subject to questioning and cross questioning.

1.58 It is for the Tribunal to decide on the admissibility of any evidence, or to determine whether or not any question should or should not be put to a witness.

1.59 The local policing body shall arrange for a verbatim record of evidence given at the tribunal to be taken and kept by the local policing body for at least 2 years.

1.60 The Tribunal have discretion to proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so. Where it is decided to proceed in the absence of either party the Tribunal should record its reasons for doing so. The Tribunal may adjourn the appeal as necessary.

1.61 The hearing shall be held in public, subject to the discretion of the chair to require any observer to withdraw from the hearing or impose any conditions on the attendance of any observer as the chair sees fit.

Attendance of other persons

1.62 Where the matter to be dealt with at the appeal is related directly to a complaint made against the appellant or a conduct matter involving an interested party, then the chair of the tribunal shall cause the complainant or interested party to be given notice of the time, date and place of the tribunal.

1.63 The complainant or interested party may attend the tribunal as an observer. The complainant or interested party may be accompanied by one other person and in addition, if the complainant or interested party has a special need, by one further person to accommodate that need.

1.64 Where the complainant or interested party or any person accompanying them is to give evidence at the tribunal, then he or she or any person accompanying him or her may not attend the hearing before that evidence is given.

1.65 Where the appeal is a 'specified appeal', then the tribunal chair shall cause the IPCC to be notified of the time, date and location of the tribunal. In such cases the IPCC may attend as an observer.

Determination and Outcome of Appeal

1.66 A tribunal need not be unanimous in its determination of the appeal or of any other decision before it and may reach a decision based on a majority. Where a tribunal finds itself divided equally, the tribunal chair will have the casting vote. The tribunal shall not indicate whether any determination was taken unanimously or by a majority.

1.67 A tribunal, when determining any disciplinary or unsatisfactory performance outcome imposed, may impose any outcome that the original panel/person could have imposed. The tribunal has the power to increase as well as reduce the outcome imposed by the original panel/person.

1.68 Where the tribunal decides that the finding or outcome may be unsafe due to new evidence under rule 4(4)(b) of the PAT Rules or procedural unfairness under rule 4(4)(c), then the tribunal may set aside the relevant decision and remit the matter back to the force to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations. Where the original decision was taken by a panel, the case will be reheard by a fresh panel which does not contain any of the members of the original panel.

1.69 The chair of the tribunal may provide representations as to the continued publication of information on the barred list to the College of Policing. The chair would have regard to the relevant exemptions from publication as set out in Annex I.

1.70 The decision of the tribunal will normally be made on the day of the tribunal hearing. Where this is not practicable then the decision will be made as soon as possible.

1.71 The tribunal chair shall, within 3 working days of the tribunal determining the appeal, give written notice to the appellant of the tribunal's decision.

1.72 As soon as reasonably practicable after the determination of the appeal the tribunal chair shall cause to be sent to the appellant, respondent and local policing body a written statement of its reasons for its determination of the appeal. It is expected that this will normally be sent within 20 working days of the determination of the appeal.

1.73 A police officer ordered to be reinstated in his or her former force or rank will be deemed to have served in his or her force and/or rank continuously from the date of the original decision to the date of reinstatement. Reinstatement means that the officer is put back in the role that he or she would have been in if not dismissed or reduced in rank with immediate effect. Unless otherwise determined

by the Tribunal the officer is deemed to have served in the force for the purposes of his or her pay from the date of the original decision.

Costs

1.74 Any fees and expenses of the tribunal members will be borne by the local policing body.

1.75 An appellant pays their own costs of the appeal unless the tribunal directs that the whole or part of his or her costs are to be paid by the local policing body. Where the Tribunal decides to award costs in favour of the appellant, it is suggested that the Tribunal sets out the reasons for this and identifies any lessons to be learned for the force as a result of the case.

Annex D

SECONDED POLICE OFFICERS - UNDER SECTION 97 OF THE POLICE ACT 1996

1.1 This guidance sets out the procedures for dealing with matters of unsatisfactory performance or attendance and misconduct allegations in respect of police officers who are seconded under the provisions of Section 97 of the Police Act 1996.

1.2 The procedures set out in the Conduct Regulations and Performance Regulations cannot be applied by the organisation to which the police officer is seconded under Section 97 of the Police Act 1996. However the procedures set out in the Regulations can be applied by the parent force in respect of conduct, performance or attendance whilst on secondment.

1.3 Those responsible for managing police officers on secondment are expected to uphold the principles contained within this guidance, namely to manage any issue of unsatisfactory performance or attendance or minor misconduct in a proportionate, fair and timely manner without returning an officer to his or her parent force. Only if it is necessary to institute the formal procedures should an officer be returned to force, in accordance with the principles and procedures expressed below. [NB where an officer is on secondment under the Police (Overseas Service) Act 1945, with the Police Ombudsman for Northern Ireland or with the Police Service of Northern Ireland, then he can be dealt with by the receiving organisation under their disciplinary arrangements. However, on return to his force, he can still be dealt with under the Police disciplinary arrangements in respect of the same matters.]

1.4 It is important that police officers on secondment are clear about who has line management responsibility for them. The line managers for such police officers must ensure that the police officer continues to have a PDR (or equivalent) and is made aware of these arrangements for dealing with issues of misconduct or unsatisfactory performance or attendance.

Unsatisfactory performance procedures

1.5 It is recognised that the public is entitled to expect the highest standards of performance of police duties from all seconded police officers. Similarly, managers need a management system which both supports police officers performing their tasks and reinforces the aims of both the service and the organisation to which the police officer is seconded.

1.6 Unlike the broad policing functions performed by police forces throughout England and Wales, the nature and range of the tasks carried out by police officers who are seconded from their forces are specific and, by their nature may be narrow and/or specialist. It follows that the need to deal fairly with such police officers whose performance is giving rise to concern requires particular attention.

1.7 Where a pattern of performance by a seconded police officer is giving rise to concern, the line manager should raise his or her concerns with the police officer concerned and seek to identify any underlying causes of the unsatisfactory performance or attendance. The line manager should seek to improve the police officer's performance or attendance to an acceptable standard.

1.8 Where there is no or insufficient improvement in the performance or attendance of the police officer, the seconded police officer's line manager should prepare a written report which details the nature of the unsatisfactory performance or attendance together with the remedial and other measures taken, and send this report to the head of the organisation to which the police officer is seconded (or his or her nominated representative). The head of the organisation (or nominated representative), in conjunction with the appropriate authority for the police officer concerned, will decide whether it is

appropriate that the police officer concerned should be returned to his or her parent force or whether the unsatisfactory performance or attendance can be addressed with the police officer remaining on secondment.

1.9 Where a police officer who has been returned to his or her parent force under this procedure continues to demonstrate the same pattern of unsatisfactory performance or attendance then the details of the unsatisfactory performance or attendance whilst on secondment may be used to inform the decision whether it is appropriate to use the UPPs.

Misconduct procedures

1.10 The public and colleagues with whom police officers work are entitled to expect the highest level of personal and professional standards of police officers. Those serving on secondment are expected to act in accordance with the Standards of Professional Behaviour (see Section 1).

1.11 Section 2 of this guidance sets out the principles for dealing with allegations of misconduct. This allows for less serious matters to be dealt with in a proportionate and timely manner by means of management action and this principle will apply to police officers who are seconded to other organisations with host line managers having the responsibility for dealing with these issues.

1.12 The organisation to which the police officer has been seconded will need to make an initial assessment of the allegation of misconduct. If that assessment determines that the matter can be dealt with by management action then the seconded officer's manager is expected to deal with the matter in this way. As part of this decision making process, it may be necessary for the line manager to contact the appropriate authority for the seconded officer to assist in determining the nature of the conduct and whether it should be investigated. In this regard, the appropriate authority will need to consider its obligations under the 2002 Act and any requirement to refer a matter to the Independent Police Complaints Commission.

1.13 However, where the line manager considers that an alleged breach of the Standards of Professional Behaviour is more serious and indicates that the police officer concerned may have committed a criminal offence, or behaved in a manner that would justify the bringing of disciplinary proceedings, then the head of the organisation to which the police officer is seconded (or his or her nominated representative) will liaise with the appropriate authority from which the police officer concerned is seconded to assess whether the officer should be returned to the force while a preliminary assessment into the matter is conducted by the parent force. If, as a result of that preliminary assessment, the parent force considers it appropriate to issue a regulation 15 notice in relation to the matter then the officer must be returned to force.

1.14 Where it is determined by the appropriate authority for the seconded officer and the organisation to which he or she is seconded, that the conduct, if proved or admitted, would not justify the bringing of disciplinary proceedings then management action may still be taken where appropriate.

1.15 At the conclusion of any disciplinary proceedings, where the police officer has been returned to the parent force, then the parent force together with the organisation to which the police officer concerned was seconded, will decide if it is appropriate for the police officer to be able to resume his or her secondment.

1.16 The arrangements set out in this guidance should be agreed to as part of the secondment agreements in force between the police force, the receiving organisation and the officer. This will ensure that the receiving organisation accepts its role as set out above, and that the officer gives his or her consent to the exchange of information between the receiving organisation and the home force.

Annex E

Notice of alleged breach of the Standards of Professional Behaviour – regulation 15 of the Police (Conduct) Regulations 2012 and regulation 16 of the Police (Complaints and Misconduct) Regulations 2012

Name: _____ Warrant number: _____ Rank: _____

Name of complainant (If appropriate):

Case reference number: _____

This is to notify you that an allegation has been made that your individual conduct may have breached the Standards of Professional Behaviour and that there will be an investigation into the circumstances.

Whilst you do not have to say anything it may harm your case if you do not mention when interviewed, or when providing any information (under regulations 16(1) or 22(2) or (3) or 45 of the Police (Conduct) Regulations 2012 or regulation 18 of the Police (Complaints and Misconduct) Regulations 2012), something which you later rely on in any misconduct proceedings or special case hearing or any appeal proceedings.

The details of your conduct that it is alleged may have breached the Standards of Professional Behaviour can be found below. (See notes overleaf).

Based on the information available at this time the conduct described above, if proven or admitted, has been assessed as amounting to:

Misconduct ☐ Gross Misconduct ☐

This may result in your attendance at a:

Misconduct Meeting ☐ Misconduct Hearing ☐

(continue on separate sheet as necessary)

Name of person investigating _____

Contact Details (Address / Tel / E-mail) _____

Signature of person investigating _____ Date:

I acknowledge that I have received a copy of this document and my attention has been drawn to the accompanying notes.

Signature of Officer concerned. _____ Date:

Print Name _____

I authorise a copy of this notice to be forwarded to my Staff Association. Yes ☐ No ☐

Signature of Officer concerned. _____

If the notice is not given to the officer by the person investigating please append the name and signature of the person giving the notice below: -

Name: Signature: Date:

EXPLANATORY NOTES

1. This notice has been issued to inform you at the earliest possible stage that an allegation has been made that you may have breached the Standards of Professional Behaviour and that there is to be an investigation into your individual conduct in accordance with the Conduct Regulations or the Police (Complaints and Misconduct) Regulations 2012.

2. The fact that you have been given this notice does not necessarily imply that misconduct proceedings will be taken against you but is given to safeguard your interests. It is given in order that you have the opportunity to secure any documentation or other material or make any notes that may assist you in responding to the allegation(s).

3. You have the right to seek advice from your staff association and be advised, represented and accompanied at any interview, meeting or hearing by a 'police friend' who must be a member of the police service or a nominee of your staff association and not otherwise involved in the matter (in accordance with regulation 6 of the Conduct Regulations or 17 of the Police (Complaints and Misconduct) Regulations 2012). A special constable may be represented by a police officer or police staff member.

4. Within 10 working days of being served with this notice (starting with the day after this notice is given, unless this period is extended by the investigator) you may provide a written or oral statement relating to any matter under investigation and you or your police friend may provide any relevant documents to the investigator who must consider those documents. Failure to provide a response to this notice may lead to an adverse inference being drawn in any subsequent misconduct proceedings or at any special case hearing or appeal.

5. If, following service of this notice, the assessment of conduct or the determination of the likely form of any misconduct proceedings to be taken is revised then as soon as practicable you will be given a further written notice together with reasons for that change.

6. Prior to being interviewed you will be provided with sufficient information and time to prepare for the interview. The information provided should include full details of the allegations made against you, including the relevant date(s) and place(s) of the alleged misconduct, where known.

7. You are reminded that failure to provide an account or response to any questions at this stage of the investigation may lead to an adverse inference being drawn at a later stage.

8. At the conclusion of the investigation, if direction is given to withdraw the case then upon request you shall, subject to the harm test, be provided with a copy of the investigator's report or such parts of that report as relate to you.

9. Where the case is referred to misconduct proceedings you shall be given written notice of the referral, a copy of any statement made by you to the investigator, a copy, subject to the harm test, of the investigator's report or such parts of that report as relate to you and any other relevant document gathered in the course of the investigation.

10. You should understand that any decision as to whether there is a case to answer that you may have breached the Standards of Professional Behaviour and whether the matter should be referred to misconduct proceedings will be based on an objective assessment of all the evidence provided during the course of the investigation. If the case is referred to misconduct proceedings, the decision at the meeting or hearing will be determined on the standard of proof required in civil cases, which is the balance of probabilities.

11. If the case is referred to a misconduct hearing or special case hearing you have the right to be legally represented by a barrister or solicitor. If you elect not to be so represented you may be represented by a police friend, however if you elect not to be legally represented you may still be dismissed or receive any other disciplinary outcome without being so represented.

12. If you are dismissed as a result of these proceedings, you will be included on the barred list. Whilst included on the barred list, this will act as an absolute bar to being employed or appointed by a police force or other specified law enforcement body. Where your dismissal related to conduct, your information will be publically available for 5 years after you have been included on the barred list, unless certain exemptions apply. After 5 years of being included on the barred list, you will have the option to have your barred status reviewed which may result in your removal from the barred list.

13. Outcomes available in misconduct proceedings

Misconduct Meeting

- Misconduct not found
- No further action
- Management advice
- Written warning (12 months)
- Final written warning (18 months)

Misconduct Hearing

- Misconduct not found
- No further action
- Management advice
- Written warning (12 months)
- Final written warning (18 months)
- Extension of final written warning (exceptional circumstances only)
- Dismissal with notice
- Dismissal without notice

Annex F

NOMINATIONS OF LEGALLY-QUALIFIED CHAIRS BY LOCAL POLICING BODIES

1.1 This Annex applies to the nominations of legally-qualified persons to chair misconduct hearings concerning non-senior officers where an officer is given notice of referral to misconduct proceedings under regulation 21(1) of the conduct regulations on or after 1 January 2016 (see regulation 5 of the Conduct (Amendment) Regulations 2015).

1.2 Whilst the chairs of misconduct hearings are not judicial appointments, anyone nominated to chair misconduct hearings by the Local Policing Body must fulfil the judicial appointment eligibility condition as set out in section 50 of the Tribunals, Courts and Enforcement Act, on a 5-year basis.

1.3 The expectation is that anyone nominated to chair misconduct hearings by a Local Policing Body will be independent of the police and that therefore they will not be under the direction and control of a chief officer of police, either as a member of police staff or as a member of a police force or a special constable.

1.4 The Local Policing Body should also give consideration to whether there is any other potential conflict of interest that may make it inappropriate for a person to be nominated to chair misconduct hearings.

1.5 Legally-qualified chairs may be paid on a fee paid basis as advertised by the Local Policing Body when nominating persons to the list. The fees may be set at any rate specified by the Local Policing Body, this rate may be lower than, but should not exceed, the fee rate specified by the Home Office for Police Appeals Tribunal chairs.

Annex G

MISCONDUCT PROCEDURES FOR FORMER POLICE OFFICERS

1.1 This Annex applies to investigations and misconduct hearings for former police officers after 15 December 2017 following the introduction of Former Officer Regulations. The Former Officer Regulations apply with modifications and under certain conditions the Conduct Regulations, the Complaints Regulations and Schedule 3 to the 2002 Act to former police officers.

1.2 Misconduct procedures are only applicable for former officers where the severity assessment of the conduct (see paragraph 1.11) is one of gross misconduct. That is where the appropriate authority considers that the misconduct if proved is so serious a breach of the Standards of Professional Behaviour that it would have resulted in the dismissal of the officer if they had still been serving with the force.

1.3 The modifications and amendments made in relation to former officers do not change the way that the statutory framework of the regulations and schedule 3 are applied in relation to those who are serving with the police, except where there are specific changes that apply in all cases involving regulations related to serving officers, which includes taking account of the police barred list, the removal of regulation 10A.

Former Officer Conditions

1.4 For the purpose of misconduct procedures there are three conditions of former officer introduced by regulation 5 of the Former Officer Regulations.

1.5 A Condition A case will apply where an officer has resigned or retired or made clear their intention to resign or retire (as set out in paragraphs 2.56 to 2.61 and formerly restricted by regulation 10A of the Conduct Regulation after an allegation first comes to the attention of an appropriate authority under the Conduct Regulations and an investigation into allegations of misconduct may begin or continue to a conclusion and lead to a hearing if appropriate.

1.6 A Condition B case will apply where an allegation of misconduct comes to the attention of an appropriate authority and the officer concerned had ceased to be a member of a police force for a period not exceeding 12 months. Where the appropriate authority assesses that the allegation amounts to one of gross misconduct (see paragraph 1.11 below) the investigation may begin and lead to a hearing where there is a case to answer for gross misconduct.

1.7 A Condition C case will apply where an allegation of misconduct comes to the attention of an appropriate authority and the period since the person left the police force exceeds 12

months. Condition C cases are intended to cover only the most serious and exceptional cases of misconduct likely to do damage to public confidence in policing.

1.8 A 'Condition C person' will be identified as such under the circumstances outlined in paragraph 1.7 but no determination will be made at this stage. A special determination will need to be made by the Independent Police Complaints Commission (IPCC) - as described in paragraph 1.32 below – at the conclusion of the investigation and where there is a case answer for gross misconduct (see paragraph 1.28 below). This determination will follow an investigation conducted by or managed by the IPCC following their determination of the mode of investigation as described in paragraph 1.16. Where, after examining the level of seriousness and public interest in the case, the IPCC have determined that the mode of investigation should be conducted by the appropriate authority, or supervised by the Commission, a case to answer for gross misconduct may be recorded but will not lead to the special determination or hearing.

1.9 Where these conditions for former officers are met, the Conduct Regulations and the Complaints Regulations apply with modifications. The Conduct Regulations have been amended by regulation 5 of the Former Officer Regulations so that they apply to persons who have ceased to be members of a police force and meet Conditions A, B or C but with important modifications set out in Schedule 3 to the Former Officer Regulations. The effect of regulation 27 of the Former Officer Regulations is that the Complaint Regulations should be read as if the former officer subject to the allegations were still serving and serving in the position in which he or she last served. The procedures for investigation and hearing will therefore be the same as those set out for serving officers in the Conduct Regulations and Complaint Regulations and the guidance set out here in Chapter 2 should be followed with some important differences The important differences in procedures are set out in paragraphs 1.25 to 1.38 of this Annex.

Police Friends

1.10 A former officer may choose a person to represent him or her for the purpose of the misconduct proceedings. That person may be:
- a police officer;
- a police staff member;
- a person nominated by his staff association;
- any other person outside of the police force.

It is worth noting that where the former officer selects someone outside of the police force but who has not been involved in the case, as for civilian staff, the former officer must seek the approval for that person to represent them from the chief officer of the police force where he or she was serving at the time the alleged misconduct took place.

Assessment of Conduct and whether further action is taken

1.11 As for investigations for serving officers, the appropriate authority needs to assess the level of the conduct under investigation. The purpose of the assessment is to decide whether the matter to be investigated is potentially one of misconduct or gross misconduct. This will allow the former officer to have an early indication of the possible outcome if the allegation is proven or admitted. As for a serving officer, the assessment concerns whether the conduct did not meet the standards set out in the Standards of Professional Behaviour in the Conduct Regulations. For former officers that will include a judgment on how the standards should have been met at the time of the allegation.

1.12 In making that assessment the appropriate authority should look at the conduct in the way described in Chapter 2, examining the circumstances and conduct of the allegation, the known evidence and how relevant and proportionate it would be to seek further evidence. As for serving officers, the assessment should consider the seriousness of the allegation and the likely conclusions that could be reasonably drawn from the evidence. Assessment should also consider foreseeable mitigating factors. These considerations should be made with regard to the context of the period in which the alleged conduct took place.

1.13 Where the initial assessment indicates that the conduct potentially amounts to misconduct but not gross misconduct no further investigation may be required and the former officer should be informed. If new evidence emerges or the initial assessment has been made incorrectly then a fresh assessment can be made. As for serving officers as described in Chapter 2, if a fresh assessment is made and the matter moved up a level to gross misconduct then the former officer should be informed and provided with the reasons for the change. An upgrading to gross misconduct should generally only be appropriate where new evidence has emerged since the initial assessment.

1.14 Where the initial assessment indicates that the conduct potentially amounts to gross misconduct then the matter will be investigated and the former officer given a written notice as described below in paragraph 1.20. If the assessment is subsequently changed to misconduct, no further investigation may be required. In circumstances where the investigation relates to a recordable conduct matter and a complaint subject to special requirements (under regulation 7 of the Complaint Regulations) or a matter is referred to the IPCC because it relates to death or serious injury (under regulation 8 of the Complaint Regulations) the investigation will go ahead. This is regardless of whether an initial assessment indicates that the conduct of the individual former officer or officers does not amount potentially to gross misconduct. In all cases, it will remain open to forces and the IPCC to investigate misconduct, even where no sanctions are available. This is to ensure lessons are learnt and answers provided. The final report of the investigation will not indicate whether there is a case to answer for gross misconduct and will lead potentially to referral to a hearing unless a fresh assessment is made – as described in paragraph 1.13 - and new evidence emerges of gross misconduct.

1.15 It will be important for the appropriate authority in cases involving a former officer to assess the level of fitness of the officer concerned and whether disability or ill health would mean that they should take no further action. No further action will be required if the appropriate authority are satisfied that the former officer is unfit for disciplinary proceedings on the grounds of disability or ill health. Appropriate authorities will also need to make all reasonable efforts to locate the former officer. Where all reasonable efforts to find the person have been made and have been unsuccessful. they will not proceed with the investigation.

Determining the mode of investigation under the Complaint Regulations and severity assessment

1.16 Where a complaint, recordable conduct or Death and Serious Injury (DSI) matter is referred to the IPCC, the Commission will determine the form of an investigation under paragraph 15 to Schedule 3 to the 2002 Act. This can take the form of:

- an investigation by the appropriate authority on its own behalf;
- an investigation by the appropriate authority under the supervision of the Commission;
- an investigation by the appropriate authority under the management of the Commission;
- an investigation by the Commission itself.

1.17 The Commission will determine the form of investigation based on the seriousness and public interest in the case.

1.18 A recordable conduct matter and a complaint subject to special requirements investigated under the 2002 Act must, at an early stage, make a severity assessment in consultation with the appropriate authority. That assessment should be whether the matter being investigated is potentially one of gross misconduct. Where the assessment is that the conduct if proven would amount to misconduct no further action may be taken against the officer – and a special determination will not be made - but investigation may continue.

Appointment of an investigator

1.19 The appointment of an investigator into the conduct of a former officer will be made as for serving officers under the 2002 Act and the Complaint Regulations and regulation 13 of the Conduct Regulations. The purpose of the investigation is, as it is for one involving a serving officer, to gather evidence to establish the facts and circumstances of the alleged misconduct. It is therefore important to avoid conflicts of interest that may have arisen in the past from the former officer's relationship with the investigating officer who may have been in his chain of command or line management and may have been in a position where the officer concerned had influence over him or her. The Former Officer Regulations therefore specify that the investigating officer should not be appointed where they previously worked directly or indirectly under the management of the officer concerned at the time of the alleged misconduct. This is potentially the case for investigations into

former senior officers, and therefore they should not be appointed where they were, at the relevant time, a member of the same police force or serving in the same division if a member of the metropolitan police force.

Written Notices

1.20 The investigator will ensure that a written notice is sent to the former officer under investigation as under regulation 15 of the Conduct Regulations or under regulation 16 of the Complaint Regulations. The notice will:

a) Inform the former officer that there is to be an investigation of his or her potential breach of the Standards of Professional Behaviour and inform the former officer of the name of the investigator who will investigate the matter.

b) Describe the conduct that is the subject of the investigation and how that conduct is alleged to have fallen below the Standards of Professional Behaviour.

c) Inform the former officer concerned of the appropriate authority's assessment (or in a matter dealt with under the 2002 Act the investigator's assessment) of whether the conduct alleged, if proved, would amount to gross misconduct.

d) Inform the former officer that, if the case were to be referred to misconduct proceedings, those proceedings would be a misconduct hearing.

e) Inform the former officer that if the appropriate authority revises its assessment of the conduct, the former officer will be given a further written notice.

f) Inform the former officer of his or her right to seek advice from his or her staff association or any other body and who the former officer may choose to act as his or her police friend. If they are no longer a member of a staff association they may choose a police friend from outside the force but must seek the approval of the chief officer from the force where he or she last served prior to leaving policing.

g) Inform the former officer that if his or her case is referred to a misconduct hearing or special case hearing, he or she has the right to be legally represented by a relevant lawyer. If the former officer elects not to be so represented then he or she may be represented by a police friend. The notice will also make clear that if he or she elects not to be legally represented then he or she may be subject to disciplinary action without

being so represented. That disciplinary action would be that he or she would have been dismissed if he or she had not ceased to be a member of a police force.

h) Inform the former officer that he or she may provide, within 10 working days of receipt of the notice (unless this period is extended by the investigator), a written or oral statement relating to any matter under investigation and he or she (or his or her police friend) may provide any relevant documents to the investigator within this time.

i) Inform the former officer that whilst he or she does not have to say anything, it may harm his or her case if he or she does not mention when interviewed or when providing any information within the relevant time limits something which he or she later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or Police Appeals Tribunal.

1.21 The language of the notice should be clear and unambiguous as described for serving officers in paragraphs 2.144 and the terms of reference should be included as described in paragraph 2.145. Responsibility for provision of the notice is as described in paragraphs 2.146 – 2.149. Circumstances for former officers may have changed and serving of the notice in person may not be possible. The alternative of notice by recorded delivery to last known address should be used but good practice will be to verify the former officer's current address and all efforts made to locate the former officer. Action should be taken as described in paragraph 1.15 where the former officer can not be located.

Attending an Interview

1.22 A formal interview with the former officer will usually be deemed necessary where the investigation is for gross misconduct although it may not be necessary or appropriate in every case. The interview will be an opportunity to gather further evidence and establish the facts and circumstance of the alleged gross misconduct. For the former officer it will provide an opportunity for him or her to hear some of the existing evidence, answer the investigator's questions and put forward his or her position. The investigator will therefore expect that the former officer will comply with all reasonable requests involved in the investigation and will attend an interview. The investigator should agree a time and date for the interview as described in Chapter 2 with the exception that, should the former officer fail to attend, it should not be treated as a further misconduct matter. Alternative dates must be reasonable and greater flexibility might be needed for former officers whose circumstances may have changed. There is no regulation that the alternative date should be within five working days from the day specified by the investigator.

1.23 Circumstances for a former officer who has retired or resigned may of course be different from their circumstances when they were in the force and they might, for example, have moved some significant distance away from the area in which the investigation is based.

There may be other circumstances which make attendance at an interview difficult. Under the Former Officer Regulations, the investigator can decide that it is unreasonable to expect the former officer to attend an interview and can issue a written notice of enquiry. Where it is reasonable for the former officer to attend an interview, and a written notice of enquiry is not considered appropriate by the investigator, if the former officer fails to attend then an inference can be made from non attendance during the course of a misconduct hearing if held.

Written Notice of Enquiry

1.24 The written notice of enquiry will be used only where the investigator considers it unreasonable for the former officer to attend an interview in person. This might be because the former officer has moved a substantial distance away from where the investigation is taking place or there are other legitimate reasons for non attendance that are set out in writing by the former officer. It cannot be used where the former officer appears to have committed a criminal offence nor where the matter to be investigated involves both criminal and misconduct allegations. It will be used to gather further evidence and establish the facts and circumstances of the alleged gross misconduct. For the former officer it will provide an opportunity to answer the investigator's questions and to put forward his or her position. Where a written notice of enquiry is used no adverse inference will be drawn from non attendance at an interview. The notice will:

- remind the former officer of the warning contained in regulation 15(1)(h) of the Conduct Regulations or regulation 16(1)(h) of the Complaint Regulations that while he or she does not have to say anything, it might harm his or her case if he or she does not mention when providing a written response something which he or she later relies on in any misconduct proceedings;
- provide full details of the allegations;
- set out any questions the investigator wishes to ask the former officer;
- request a response;
- specify a time for a response; and
- specify that where the former officer does not respond to a written notice of enquiry, the investigator can draw adverse inference at a later stage in the investigation.

Report of the investigation and referral to misconduct proceedings

1.25 The purpose of the investigation report is to give an accurate summary of the evidence that has been gathered, establish the facts underlying the allegation as well as come to some conclusion as to whether the officer or officers have breached the Standards of Professional Behaviour. In cases where the proceedings might lead to a misconduct hearing the report will be expected to give an opinion on whether there is a case to answer for gross misconduct.

The report of the investigation into misconduct for a former officer will therefore require a summary of the evidence. Whether and how it gives an opinion on the case to answer will depend on the different circumstances and conditions which gave rise to the investigation, the mode of investigation and whether referral to a misconduct hearing is appropriate.

Where a hearing will not be appropriate for the former officer under investigation, under circumstances outlined below, the report will still need to indicate where there may have been a breach of the Standards of Professional Behaviour and where that breach is so serious that it would have justified dismissal. This is necessary to conclude and summarise the investigation and to establish that, if the officer had still been serving, he or she would have been subject to misconduct proceedings. The different circumstances of investigations and the appropriate content of the report are outlined below.

a) Investigation by the appropriate authority under the Conduct Regulations

1.26 A report following an investigation into a former officer's conduct under the Conduct Regulations could lead to a misconduct hearing where there is a case to answer for gross misconduct. The report will therefore be expected to give the investigator's opinion as to whether there is a case to answer for gross misconduct or no case to answer. Where the investigator's opinion is that there is no case to answer for gross misconduct they should indicate whether or not nevertheless there may have been a breach of the Standards of Professional Behaviour. Where the former officer may fall under the definition of a "Condition C person", the report should indicate whether there has been a breach of the Standards of Professional Behaviour and whether that breach was so serious that the person's dismissal would have been justified if they had still been serving.

1.27 On receipt of the report, the appropriate authority should determine whether there is a case to answer for gross misconduct. Where they determine that there is no case to answer for gross misconduct they should take no further action. Where they determine that there is a case to answer for gross misconduct, the appropriate authority should refer the case to a misconduct hearing unless they are satisfied that the former officer is unfit for disciplinary proceedings or they have not been able to establish his or her whereabouts.

b) Investigation under the Complaints Regulations – Investigations by the appropriate authority

1.28 Where the investigation concerned a Condition A case or a Condition B case and the mode of investigation as determined by the IPCC was carried out by the appropriate authority or one supervised by the Commission (under paragraph 16 or 17 of Schedule 3 to the 2002 Act), the proceedings can lead to a misconduct hearing. The report would be expected to indicate whether there was a case to answer for gross misconduct or there is no case to answer. Where there is no case to answer the investigator should give an opinion as to whether there nevertheless may have been a breach of the Standards of Professional Behaviour.

1.29 On receipt of the report, the appropriate authority should determine whether there is a case to answer for gross misconduct. Where they determine that there is no case to answer they should take no further action. Where they determine that there is a case to answer for gross misconduct, the appropriate authority should refer the case to a misconduct hearing unless they are satisfied that the former officer is unfit for disciplinary proceedings or they have not been able to establish his whereabouts as described in paragraph 1.14 of this Annex.

1.30 Where the investigation concerned a Condition C person but was not considered so serious or concerned public interest to the extent that it was investigated by the Commission or managed by them, it will not lead to a misconduct hearing. The investigator will nevertheless be expected to give an opinion as to whether there was a breach of the Standards of Professional Behaviour and whether that breach was so serious that dismissal would have been justified if the person had still been serving. This will also be the case where the matter for a Condition C person was investigated by the appropriate authority under the Conduct Regulations.

c) Investigation under the Complaints Regulations – Investigations by the IPCC

1.31 If the former officer falls under the definition of a Condition C person, and the investigation was either managed by the Commission or led by them (under paragraph 18 or 19 of Schedule 3 to the 2002 Act), the report will be expected to say whether there is a case to answer for gross misconduct or no case to answer. Where there is no case to answer for gross misconduct, the report will be expected to give an opinion on whether there has nevertheless been a breach of the Standards of Professional Behaviour.

1.32 Following the report, the Commission should notify the appropriate authority that they should determine whether there is a case to answer for gross misconduct. Once the appropriate authority has made that determination it should submit a memorandum to the Commission. If the appropriate authority's determination is that there is a case to answer for gross misconduct then the Commission will make a Condition C special determination. Where there is dispute over whether there has been a breach of the Standards of Professional Behaviour in an investigation managed or led by the IPCC, the IPCC is able to over rule the appropriate authority.

Condition C Special Determination

1.33 Officers accused of gross misconduct who have left the force for more than 12 months should be held to account and disciplinary proceedings brought in cases where there is evidence of the most serious acts of wrongdoing which have led to serious damage to public confidence in policing. In these cases we want to ensure that allegations are properly investigated and proceedings concluded where it is reasonable and proportionate to do so. The special determination is intended to ensure that cases involving Condition C person

are only taken to misconduct hearings in these circumstances. This test deliberately sets the bar higher for taking a case to a hearing than for Condition A and B cases.

1.34 In determining whether it is reasonable and proportionate, the Commission should have regard to:

- the seriousness of the alleged misconduct;
- the impact of the allegation on public confidence;
- the public interest.

1.35 This determination can only be made following an investigation (under paragraph 18 or 19 of Schedule 3 of the 2002 Act), where the appropriate authority determines(or is directed by the IPCC) that there a case to answer for gross misconduct as described in paragraph 1.29.

1.36 In making a special determination, there are a number of steps that need to be taken by the IPCC and others:

a) the IPCC will give notification that they are making the determination to the complainant, any interested person and the officer concerned. The notification must set out the consequences under Schedule 3 to the 2002 Act of such a determination and explain the effect of regulation 4A (see below). The notification will also explain that following a determination that it is reasonable and proportionate to proceed to a misconduct hearing, the former officer may be subject to a finding that he or she would have been dismissed if they had still been serving and that they will be included in the barred list. The former officer will also be informed of any findings related to the conduct, their rights to provide a written statement, their right to be advised by a staff association and any other body and a copy of the report submitted to the Commission;

b) the former officer may within 21 days provide a written statement and any document relating to the Condition C special determination;

c) the Commission will take into account any written statement from the former officer, the complainant or any interested party;

d) the IPCC may consult any persons they think fit and consider any other relevant evidence. It will be appropriate for the IPCC to consult with organisations such as Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) who may have important evidence specifically on the impact of public confidence in the force concerned and also on other relevant matters. For investigations involving senior officers, the IPCC will need to be aware of HMCICFRS potential role in sitting on misconduct hearing panels and whether there is a conflict of interest;

e) any evidence provided for the determination under the consultation will need to be given to the officer concerned as part of the notification of the hearing;

f) the Commission will make the determination using the criteria set out in the Former Officer Regulations, Schedule 1, Part 1A, paragraph 4A and illustrated in paragraph 1.36 below;

g) On making the determination, the Commission must give notification in writing to the complainant, any interested party and the former officer concerned.

1.37 As part of the determination, the IPCC will consider a number of criteria that have been set out in Schedule 1 to the Former Officer Regulations, as modifications to the Conduct regulations, Part 1A, regulation 4A that will allow the IPCC to make a judgement on the level of seriousness, public interest and impact on public confidence. For example, there are a number of factors such as whether the complainant or other person has been harmed by the alleged gross misconduct that the Commission will have to assess in order to determine the level of seriousness of the case. In terms of public confidence the Commission will assess, for example, the effect that gross misconduct had on the relations between the public and the police.

1.38 When assessing the public interest, the Commission will look, for example, at whether the officer concerned will be prevented from future employment without the necessity of holding proceedings. The Commission can consider other matters to those set out in Regulations and there is no 'point scoring' system for each criterion.

Notification of referral to misconduct hearing

1.39 Where it has been determined that there is a case to answer for gross misconduct and, in the case of a Condition C person, a special determination has been made by the IPCC that it is reasonable and proportionate to proceed, the appropriate authority should refer the case to a misconduct hearing and give the former officer notice of that referral. The notice should specify that the referral is to a hearing and that the conduct is alleged to amount to gross misconduct. In the case of a Condition C person, the notification should include any written statement or document and any consultation response provided to the IPCC as part of their determination. The former officer should also be given notification that, if the allegation of gross misconduct is proved, he or she may be subject to a finding that he or she would have been dismissed if he or she had not ceased to serve and would subsequently be included on the barred list.

Misconduct hearings and outcome

1.40 The misconduct hearings for a former officer will be conducted as for serving officers under the Conduct Regulations and described in Chapter 2 with some important differences in the possible outcomes and sanctions. The different steps are set out below:

a) the panel will have the same composition as for a serving officer but the member of the police force represented on the panel should be of a more senior rank to the former officer **at the point at which they last served with the police force**;

b) the notification of the hearing will include the subject matter of the case and how that conduct is alleged to amount to gross misconduct and the special determination where the former office concerned is a Condition C person;

c) the misconduct panel will be reviewing the facts of the case and deciding whether the conduct of the former officer amounts to misconduct, gross misconduct or neither. As with a hearing for serving officers, the hearing panel must apply the standard of proof in civil cases, that is the balance of probabilities. Misconduct hearings for former officers are brought only for allegations of gross misconduct and therefore the evidence will need to be persuasive and cogent to meet that standard for the panel in weighing the probability and deciding whether, on balance, the gross misconduct occurred;

d) where the panel find that the conduct amounts to misconduct, it can not impose any sanction for that finding. Where there is a finding of misconduct they will record the finding but take no further action;

e) where there is a finding of gross misconduct, the panel can only consider two potential outcomes:

i) disciplinary action; or
ii) no disciplinary action.

f) when considering whether disciplinary action should be imposed the panel can have regard to the record of service of the former officer and receive evidence from witnesses. The appropriate authority and the individual concerned will also have an opportunity to make oral or written representations.

g) where there is a finding of gross misconduct and disciplinary action is imposed it can only be that the former officer would have been dismissed if he or she had still been a member of a police force. There is no option to enforce other sanctions such as a final written warning given the termination in the former officer's employment status and employment record. Should the panel decide that the conduct did not justify the sanction of dismissal, no action will be taken and the finding of gross misconduct is recorded;

h) where disciplinary action is imposed, the panel must give notice of the right of the former officer to appeal to a police appeals tribunal;

i) the chair of the panel may provide the appropriate authority with information relevant to publication of the barred list.

Special case hearing (fast track)

1.41 The procedures for special case hearings will apply as described in the Conduct Regulations, and explained in Annex A to this Guidance, with the modification for former officers that disciplinary action can only be imposed where there is a finding of gross misconduct. Condition C cases will need the IPCC to make a special determination as described in paragraph 1.33 to 1.38. This determination should be made once a statement and special report on the investigation are sent to the Commission. If the determination is that it is not reasonable and proportionate, a hearing should not be arranged.

1.42 Disciplinary action can only be that of finding that the former officer would have been dismissed if he or she had still been a member of a police force. This outcome has the additional consequence that the individual will be included on the barred list. A finding of misconduct can be recorded but no further action taken.

Annex H

POLICE ADVISORY LIST

1.1 The police advisory list is intended to act as a vetting tool for forces and other specified law enforcement bodies in order to flag up individuals who are currently under investigation for matters which could lead to dismissal, or designated volunteers who have had their status withdrawn. Whilst it does not act as an absolute bar on employment or appointment within policing, it does provide an additional level of accountability.

1.2 In the case of both the advisory and the barred list, the term "relevant authority" is used rather than "appropriate authority". This has been included to mirror the Barred List Regulations which use "relevant authority" throughout, as well as the Conduct Regulations which refer to "relevant authority" in the sending of notices.

Overview and effect of inclusion

1.3 Officers and police staff members who resign or retire during the course of an investigation which could have led to their dismissal if they had still being serving, or who leave and a relevant allegation comes to light, will be included on the police advisory list. In these cases the relevant authority of the individual will send a report to the College of Policing within 5 working days of the individual leaving the force or of the allegation coming to the attention of the relevant authority. This report will contain the information set out in regulation 12 of the Barred List Regulations and the individual will be included on the advisory list. These individuals will therefore only be included where there is an ongoing investigation.

1.4 Volunteers designated as community support volunteers or police support volunteers (and who have certain powers of the constable conferred on them) have now been brought within the definition of individuals serving with the police. Volunteers will therefore be included on the advisory list, where they have had their designated status withdrawn as a result of conduct, efficiency or effectiveness or the individual decides to stop volunteering after a relevant allegation against them comes to light.

1.5 This will not apply where the individual was subject to an investigation which concluded that no disciplinary proceedings should be brought and subsequently leaves the force. Individuals will only be included on the advisory list where the allegation against them relates to conduct, efficiency or effectiveness and could have led to their dismissal if they had not retired or resigned.

1.6 Chief officers, local policing bodies, the IPCC and HMICFRS are under a duty to establish whether an individual is included on the advisory list before appointing or employing any person and will use the information provided where someone is on the list to inform their decision. The advisory list will therefore be used as a vetting tool when completing regular pre-employment checks. The intention in capturing this information is to give relevant authorities a broader picture of any outstanding disciplinary matters relating to a potential appointee or employee.

1.7 The College of Policing will set out the process to be followed with regards to conducting vetting checks in relation to inclusion on the advisory list.

1.8 An individual's inclusion on the advisory list does not preclude appointment or employment with any policing employer and will be a matter for the relevant authority to assess.

1.9 The advisory list will not be published. However, it is important to note that the College of Policing can disclose to any person information included on the advisory list if it is in the public interest, as set out in s88M of the Policing and Crime Act 2017.

Removal where removal condition satisfied

1.10 Where an individual has been included on the advisory list whilst an investigation is ongoing, they must be removed once an outcome has been determined. It is the responsibility of every force as the relevant authority for the purposes of the police barred and advisory lists to make these determinations and correctly report to the College of Policing. If the hearing has determined that the individual would have been dismissed if they had still been serving, they are removed from the advisory list and placed on the barred list as a result of a report to the College issued under section 88A.

1.11 If there is a finding which is less than dismissal, it is determined that no disciplinary proceedings will be brought (for example where a force decides that a post-employment hearing will not be held) or the proceedings are withdrawn, the relevant authority is obliged to make a 'further report' to the College issued under section 88L (1) and (2). Following such a report the individual will be removed and will not appear on either list.

1.12 This report must be sent to the College of Policing, within 5 working days of the removal condition being satisfied, including the information set out in Regulation 14 of the Barred List Regulations.

Automatic removal from the advisory list

1.13 Individuals who have been included in the advisory list for reasons relating to performance (including gross incompetence) will be automatically removed from the list after 5 years. This process is set out in regulation 16 of the Barred List Regulations.

Removal on successful review

1.14 Individuals may also apply to the College of Policing for removal from the advisory list using the review mechanism detailed at regulation 15 of the Barred List Regulations.

1.15 Applications for use of the review mechanism may only be undertaken where the individual has been included on the advisory list for 5 years or more, and the matter in question relates to conduct. The individual must apply to the College of Policing to demonstrate that it is appropriate for them to be removed. Where the College of Policing is satisfied that it is appropriate, they will be removed.

1.16 Where an individual has been unsuccessful, they may make a further application in another 5 years after their previous application. The College of Policing may also specify a shorter period of time at the initial review point, if they are of the view that a shorter time period is appropriate.

1.17 Further information on the details of this process will be set out in guidance produced by the College of Policing.

Removal on death or error

1.18 The College of Policing may remove an individual from the advisory list where they are satisfied that they have died. This information may be brought to the attention of the College of Policing by the original relevant authority of the individual or by a member of the public. This is set out in regulation 17 of the Barred List Regulations. If a name has been included in error, the College of Policing may also remove that individual.

Annex I

POLICE BARRED LIST

1.1 The police barred list is a statutory-approved list which acts as a bar on working within policing and certain law enforcement bodies. The intention of the list is to ensure that those who do not meet the high standards required of the police service are not able to continue to work within policing.

1.2 In the case of both the advisory and the barred list, the term "relevant authority" is used rather than "appropriate authority". This has been included to mirror the Barred List Regulations which use "relevant authority" throughout, as well as the Conduct Regulations which refer to "relevant authority" in the sending of notices.

Overview and effect of inclusion

1.3 Any individual who is dismissed from a position within policing becomes a barred person and is included on the barred list as a result of their dismissal. This will therefore include:

- individuals dismissed under the Conduct Regulations with a further finding of misconduct;
- individuals dismissed under the Conduct Regulations with a finding of gross misconduct;
- individuals dismissed under the Performance Regulations with a finding of gross incompetence;
- individuals dismissed under the Performance Regulations with a finding of unsatisfactory performance;
- individuals dismissed under the Performance Regulations with a finding of unsatisfactory attendance;
- police staff members dismissed in any of the above circumstances under the equivalent local procedures used by each force.

1.4 This will include findings made at misconduct hearings and special case hearings as well as Stage 3 proceedings under UPP.

1.5 Gross incompetence is defined in the Police Performance Regulations as "…a serious inability or serious failure of a police officer to perform the duties of the rank or role he is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account shall be taken of the attendance of a police officer when considering whether he has been grossly incompetent." An additional definition of gross incompetence in relation to police staff can be found at regulation 7 of the Barred List Regulations.

1.6 Outside of the circumstances outlined in paragraph 1.3, a report under section 88A of the Policing and Crime Act 2017 will not be required.

1.7 Former officers and special constables who are subject to an investigation under the Former Officer Regulations which concludes with a finding of 'would have been dismissed' will be included on the barred list.

1.8 Former police staff members who have left the force and a post-employment hearing has concluded with a finding of 'would have been dismissed' will also be included on the barred list. Forces are not under a requirement to hold post-employment hearings for such individuals after they have left. When a post-employment hearing, as established under local guidance and policy within each force, is held and the finding is that of 'would have been dismissed', the force must ensure that an appropriate appeal mechanism is in place to allow the police staff member to appeal this decision. This can be an internal appeal route as per the existing policy for serving police staff members.

1.9 When an individual has been dismissed, the relevant authority will send the College of Policing a report including information set out in regulation 3 of the Barred List Regulations, within 5 working days of the dismissal or finding. The College of Policing will then include the individual on the barred list.

1.10 As a consequence of the status of the barred person, chief officers, local policing bodies, the IPCC and HMICFRS cannot employ or appoint a person who is barred. This includes continuing to employ a barred person. This means that in circumstances where an individual holds a dual role within policing i.e. as a police staff member and a special constable, such a person cannot continue to be employed in either position if dismissed from one of those roles.

1.11 Chief officers, as well as the other bodies mentioned in paragraph 1.10, are also prohibited from entering into a contract for the provision of services if it would permit a barred person to be involved in the exercise of relevant public functions. This applies to all new contracts entered into on or after the 15 December 2017. Forces will be under a duty to ensure that any new contracts will be covered by the changes and therefore capture those contracting with the police. As is standard practice with contract changes, this can only apply to new contracts as existing contracts cannot be modified retrospectively.

1.12 The College of Policing will set out the process to be followed with regards to conducting vetting checks in relation to inclusion on the barred list.

1.13 Where an individual is dismissed or leaves employment outside of the circumstances outlined in paragraph 1.3 above, a report under regulation 3 of the Barred List Regulations will not be required e.g. the individual ceases to be employed for medical reasons or due to redundancy.

1.14 Student police officers who are dismissed via the regulation 13 procedure will not be included on the barred list. However, it is important that the formal disciplinary process is used where appropriate, rather than regulation 13, to ensure that relevant information is included on the lists and is available for future vetting purposes.

Publication

1.15 Police officers, special constables, former officers and former special constables dismissed under the Conduct Regulations will be placed on the published version of the barred list. Information on the officer will be publicly available for 5 years after the date on which the details were first published. Once the 5 year publication period has elapsed, the details will no longer be available publicly but will continue to be held permanently on the barred list and will be accessible to policing employers. This process is detailed in regulations 10 and 11 of the Barred List Regulations.

1.16 These details will be published by the College of Policing and made available on their website.

1.17 Police staff members and those dismissed under the Performance Regulations will not appear on the public element of the list but will be included on the barred list, accessible to policing employers. However, police staff members who are also special constables and who are dismissed in the course of their special constable role, will be included on the public version of the barred list.

1.18 Where an individual has been dismissed, the relevant authority will include in their report to the College of Policing any relevant concerns around publication and the effect that publishing some, or all, of the information may have. It is essential that any concerns around publication are included in this report in order to give the College of Policing enough information to make their decision on publication. Relevant authorities should have particular regard as to whether to publish some, or all, of the information:

- Would be against the interests of national security;
- Might prejudice the investigation or other criminal or civil proceedings;
- Would result in significant risk of harm to any individual, including the officer themselves.

1.19 Where any of these conditions apply the relevant authority must notify the College of Policing and recommend that a publication exemption applies, explaining the reasons for it.

1.20 Legally-qualified chairs also have a role to play in making representations at the conclusion of misconduct proceedings as to publication of the information set out in the Barred List Regulations. As part of their remarks at the conclusion of the proceedings, they may make reference to the factors set out above and their views on whether these, or any other relevant factors, are likely to apply. The relevant authority will then include these representations in their report to the College of Policing.

1.21 The College of Policing will take into account any representations made by the relevant authority and the legally-qualified chair, again with reference to the publication exemptions set out above and determine whether to publish the information. The College of Policing will also have reference to whether some or all of the information is already in the public domain and, if so, the manner in which it has been published. Where one or more of the exemptions do apply, the individual's details will be held privately on the list.

1.22 The expectation is that, in the vast majority of cases, details of officers who are dismissed under the Conduct Regulations are published. This will be particularly relevant where some, or all, of the information is already in the public domain.

1.23 The College of Policing will also consider information which comes to its attention relating to whether a publication exemption has begun to apply to information which has been published. This may include representations made by the chair of the Police Appeals Tribunal as part of the appeal proceedings. The College of Policing would then determine whether to cease publication of the information.

1.24 Representations made at Police Appeals Tribunals proceedings regarding continued publication do not constitute a substantive right of appeal.

1.25 Forces will need to ensure that they inform the College where it comes to their attention that a change in circumstances has led to a publication exemption which previously applied no longer applying, as soon as reasonably practicable. Where information comes to the College of Policing's attention that a publication exemption which previously applied is no longer relevant, the College of Policing may also reconsider their decision and commence publication.

1.26 If an individual is removed from the barred list for any reason, their details will also cease to appear on the public version of the list.

1.27 The College of Policing may also disclose to any person information included on the barred list if it is in the public interest, as set out in section 88H of the Policing and Crime Act 2017.

Removal on successful appeal/overturning of finding

1.28 Individuals may be removed from the barred list where they have successfully appealed the outcome of dismissal or had their finding overturned. This will apply to officers who have appealed through the Police Appeals Tribunal, Employment Tribunal or Employment Appeal Tribunal and police staff members who have appealed through an internal review route, Employment Tribunal or Employment Appeal Tribunal.

1.29 For police staff members who successfully appeal through an internal review route and have their status on the force reinstated, they will be removed from the barred list.

1.30 When an individual has been successful in their appeal or overturning of the finding, the relevant authority will send to the College of Policing a further report, including the information set out in regulation 5 of the Barred List Regulations, within 5 working days of the decision. The College of Policing will then remove the individual from the list. The individual will be able to apply for positions within policing again, although normal vetting considerations will apply in line with the Vetting Code of Practice and authorised professional practice (APP).

Automatic removal from the barred list

1.31 Individuals who have been dismissed and are placed on the barred list as a result of performance or attendance matters which do not amount to gross incompetence will be eligible for automatic removal.

1.32 Automatic removal will occur, in these limited circumstances, where the individual has been included on the barred list for 12 months. This process is outlined in Regulation 8 of the Barred List Regulations.

Removal on successful review

1.33 Individuals may also apply for removal of their barred status. This will only be available to individuals after 3 years, for those who have been dismissed as a result of gross incompetence, or after 5 years, for those dismissed for conduct matters. This process is detailed in Regulation 7 of the Barred List Regulations.

1.34 Individuals who have been dismissed for gross incompetence are able to apply for review after a shorter period of time, reflecting the differing nature of these dismissals and to ensure proportionality between misconduct and performance.

1.35 It is important to note that individuals who have been dismissed as a result of unsatisfactory performance or attendance not amounting to gross incompetence will be automatically removed from the barred list after 12 months.

1.36 There is no guarantee that an individual will be able to successfully apply for removal of their barred status using the review mechanism. It does not constitute an appeal against the original decision to dismiss, but represents an acceptance of the actions or behaviour that led to dismissal and the appropriateness of removing their barred status.

1.37 In order to engage the review mechanism, an individual should apply to the College of Policing for removal of their barred status. The College of Policing will make their decision with particular consideration of:

- The individual's demonstration of their suitability to return to policing
- The circumstances which led to the original decision/finding
- The impact removing their barred status might have on public confidence in the police.

1.38 An individual may produce documentation which supports their demonstration of their suitability to return to policing. This may include any documents or evidence which the individual feels is relevant to the application. The College of Policing may specify the type and nature of information required and also request further information, if necessary.

1.39 The College of Policing will consider the circumstances of the original decision or finding and the nature of the conduct or performance. There will clearly be cases where it would be wholly inappropriate to allow the individual to apply for positions in policing again – particularly where harm has been caused or there have been breaches relating to Honesty and Integrity.

1.40 The College of Policing must also take into account the impact which removing the individual from the barred list may have on public confidence in the police. This will be intrinsically linked with the nature and circumstances of the dismissal and the level of harm caused. It is essential that, in cases where it is not suitable that an individual's barred status be removed, they continue to be barred from working within policing and specified law enforcement bodies.

1.41 The College of Policing may also request further information as it sees fit from the individual applying or the relevant authority. This may include the IPCC where they investigated the matter.

1.42 An individual's barred status will therefore only be removed where the College of Policing deems it appropriate. Where they do believe it is appropriate, the individual will be removed from the barred list and may apply for positions within policing, although normal vetting considerations will apply in line with the Vetting Code of Practice and authorised professional practice (APP).

1.43 Where an individual has been unsuccessful, they may make a further application in another 5 years after their previous application, or another 3 years for gross incompetence. The College of Policing may also specify a shorter period of time at the initial review point, if they are of the view that a shorter time period is appropriate.

1.44 Further information on the details of this process will be set out in guidance produced by the College of Policing.

Removal on the individual's death or as a result of error

1.45 The College of Policing may remove an individual's barred status where they are satisfied that a barred person has died. This information may be brought to the attention of the College of Policing by the original relevant authority of the individual or by a member of the public. This is set out in Regulation 9 of the Barred List Regulations. If a name has been included in error, the College of Policing may also remove that individual.

Annex J

Notice of alleged breach of the Standards of Professional Behaviour – regulation 15 of the Police (Conduct) Regulations 2012 and regulation 16 of the Police (Complaints and Misconduct) Regulations 2012 as applied to a former police officer

Name: _____ Warrant number: _____ Rank: _____

Name of complainant (If appropriate):

Case reference number: _____

This is to notify you that an allegation has been made that your individual conduct may have breached the Standards of Professional Behaviour while you were a serving police officer and that there will be an investigation into the circumstances.

Whilst you do not have to say anything it may harm your case if you do not mention when interviewed, or when providing any information (under regulation 16(1) or 17(A)or 22(2) or (3) or 45 of the Police (Conduct) Regulations 2012 or regulation 18 or 19A of the Police (Complaints and Misconduct) Regulations 2012), something which you later rely on in any misconduct proceedings or special case hearing or any appeal proceedings.

The details of your conduct that it is alleged may have breached the Standards of Professional Behaviour can be found below. (See notes overleaf).

If the appropriate authority revises its assessment of the conduct, you will be given a further written notice.

Based on the information available at this time the conduct described above, if proven or admitted, has been assessed as amounting to Gross Misconduct :

Yes ☐ No ☐

This may result in your attendance at a Misconduct Hearing

(continue on separate sheet as necessary)

Name of person investigating _____

Contact Details (Address / Tel / E-mail) _____

Signature of person investigating _____ Date:

I acknowledge that I have received a copy of this document and my attention has been drawn to the accompanying notes.

Signature of Former Officer concerned. _____
Date:

Print Name _____

I authorise a copy of this notice to be forwarded to my Staff Association. Yes ☐ No ☐

Signature of Former Officer concerned.

_____

If the notice is not given to the officer by the person investigating please append the name and signature of the person giving the notice below: -

Name: Signature:
Date:

EXPLANATORY NOTES

1. This notice has been issued to inform you at the earliest possible stage that an allegation has been made that you may have breached the Standards of Professional Behaviour and that there is to be an investigation into your individual conduct in accordance with the Police (Conduct) Regulations 2012 or the Police (Complaints and Misconduct) Regulations 2012.

2. The fact that you have been given this notice does not necessarily imply that misconduct proceedings will be taken against you but is given to safeguard your interests. It is given in order that you have the opportunity to secure any documentation or other material or make any notes that may assist you in responding to the allegation(s).

3. You have the right to seek advice from your staff association and be advised, represented and accompanied at any interview, meeting or hearing by a 'police friend' who must be a member of the police service or a nominee of your staff association and not otherwise involved in the matter (in accordance with regulation 6 of the Conduct Regulations or regulation 17 of the Police (Complaints and Misconduct) Regulations 2012). A special constable may be represented by a police officer or police staff member. If you are no longer a member of a staff association you may choose a police friend from outside the force but you must seek the approval of the chief officer from the force where you last served.

4. Within 10 working days of being served with this notice (starting with the day after this notice is given, unless this period is extended by the investigator) you may provide a written or oral statement relating to any matter under investigation and you or your police friend may provide any relevant documents to the investigator who must consider those documents. Failure to provide a response to this notice may lead to an adverse inference being drawn in any subsequent misconduct proceedings or at any special case hearing or appeal.

5. If, following service of this notice, the assessment of conduct or the determination of the likely form of any misconduct proceedings to be taken is revised then as soon as practicable you will be given a further written notice together with reasons for that change.

6. Prior to being interviewed you will be provided with sufficient information and time to prepare for the interview. The information provided should include full details of the allegations made against you, including the relevant date(s) and place(s) of the alleged misconduct, where known.

7. You are reminded that failure to provide an account or response to any questions at this stage of the investigation may lead to an adverse inference being drawn at a later stage.

8. At the conclusion of the investigation, if direction is given to withdraw the case then upon request you shall, subject to the harm test, be provided with a copy of the investigator's report or such parts of that report as relate to you.

9. Where the case is referred to misconduct proceedings you shall be given written notice of the referral, a copy of any statement made by you to the investigator, a copy, subject to the harm test, of the investigator's report or such parts of that report as relate to you and any other relevant document gathered in the course of the investigation.

10. You should understand that any decision as to whether there is a case to answer that you may have breached the Standards of Professional Behaviour and whether the matter should be referred to misconduct proceedings will be based on an objective assessment of all the evidence provided during the course of the investigation. If the case is referred to misconduct proceedings, the decision at the hearing will be determined on the standard of proof required in civil cases, which is the balance of probabilities.

11. If the case is referred to a misconduct hearing or special case hearing you have the right to be legally represented by a barrister or solicitor. If you elect not to be so represented you may be represented by a police friend, however if you elect not to be legally represented you may still be dismissed or receive any other disciplinary outcome without being so represented.

12. If you are dismissed as a result of these proceedings, you will be included on the barred list. Whilst included on the barred list, this will act as an absolute bar to being employed or appointed by a police force or other specified law enforcement body. Where your dismissal related to conduct, your information will be publicly available for 5 years after you have been included on the barred list, unless certain exemptions apply. After 5 years of being included on the barred list, you will have the option to have your barred status reviewed which may result in your removal from the barred list.

Annex K

Written notice of enquiry into a breach of the Standards of Professional Behaviour under regulation 17A of the Police (Conduct) Regulations2012 or regulation 19A of the Police Complaints and Misconduct Regulations 2012

Name: _____ Warrant number: _____ Rank: _____

Name of complainant (If appropriate):

Case reference number: | |

This written notice of enquiry is to gather evidence and establish the facts and circumstance as part of the investigation into misconduct notified to you by the Regulation 15 notice sent on_____[date]. This written notice of enquiry will provide you with an opportunity to answer the questions put to you by the investigator and allow you the opportunity to put forward your position. A written notice of enquiry is issued where an investigator has considered that it is unreasonable for a former officer to attend an interview.

Whilst you do not have to say anything it may harm your case if you do not mention when providing any information (under regulations 16(1) or 17(A)or 22(2) or (3) or 45 of the Police (Conduct) Regulations 2012 or regulation 18 or 19A of the Police (Complaints and Misconduct) Regulations 2012), something which you later rely on in any misconduct proceedings or special case hearing or any appeal proceedings.

Section (i) sets out the conduct that it may have breached the Standards of Professional Behaviour
Section (ii)sets out the questions the investigator wishes to ask
Section (iii) allows you to add any additional information that you may wish to provide to the investigator

We are requesting a response by_____[date]

Where a response is not received by_____[date] the investigator may draw inferences at a later stage in the investigation

Section (i)

Section (ii)

Section (iii)

(continue on separate sheet as necessary)

Name of person investigating _____

Contact Details (Address / Tel / E-mail) _____

Signature of person investigating _____ Date:

I acknowledge that I have received a copy of this document and my attention has been drawn to the accompanying notes.

Signature of Former Officer concerned. _____
Date:

Print Name _____

I authorise a copy of this notice to be forwarded to my Staff Association. Yes ☐ No ☐

Signature of Former Officer concerned.

_____

If the notice is not given to the officer by the person investigating please append the name and signature of the person giving the notice below: -

Name: Signature:
Date: