

## **POLICE STAFF COUNCIL HANDBOOK: PART 3 GUIDANCE POLICE STAFF MISCONDUCT PROCEDURES**

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## **1. INTRODUCTION**

- 1.1 The Taylor Review of police disciplinary arrangements (the Taylor reforms) led to the new regulated disciplinary and Unsatisfactory Performance and Capability arrangements for police officers which are set out in the Police (Conduct) Regulations 2020 and the Police (Performance) Regulations 2020.
- 1.2 The Taylor report recognised that it would be desirable, where possible, for the disciplinary procedures for police officers and police staff to be compatible in order to drive consistency nationally.
- 1.3 The Police Staff Council considers it important that police officers and police staff receive equal treatment when subject of an investigation into an allegation of misconduct. Some cases already involve police officers and police staff being investigated for matters arising from the same incident and therefore having procedures that are as compatible as possible is clearly desirable.
- 1.4 This document provides guidance that enables forces to consider linking elements of the new police officer misconduct procedure to each force's misconduct procedure for police staff.

## **2. KEY PRINCIPLES**

- 2.1 The misconduct procedure should apply to all police staff and underpin the Police Staff Council (PSC) Standards of Professional Behaviour which set out the high standards of behaviour that the police force and the public expect of police staff.
- 2.2 The procedure aims to provide a fair, open and proportionate method of dealing with alleged misconduct.
- 2.3 The procedure is intended to encourage a culture of learning and development for individuals and / or the organisation.
- 2.4 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 Force).
- 2.5 The Police Force and recognised trade unions are committed to ensuring that this procedure is applied fairly to everyone.
- 2.6 It is important that managers understand their responsibility to respond to, deal promptly and effectively with, unsatisfactory behaviour and complaints about police staff conduct

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

- 2.7 The Police Force will support any manager who has exercised their judgement reasonably, fairly and objectively and has adhered to the guidance provided.

### **3. POLICE STAFF COUNCIL STANDARDS OF PROFESSIONAL BEHAVIOUR**

The PSC Standards of Professional Behaviour, set out in Joint Circular 54, shall apply to all police staff as supported by this procedure. If the conduct of an individual falls below the standards then this may be assessed by the Appropriate Authority as misconduct or gross misconduct.

### **4. DEFINITIONS**

- 4.1 *Misconduct* is a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action.
- 4.2 *Gross Misconduct* is a breach of the Standards of Professional Behaviour so serious that dismissal may be justified.
- 4.3 *Appropriate Authority* means the chief officer of the police force concerned, or as delegated – provided this is not delegated below Chief Inspector level / police staff equivalent.
- 4.4 *Director General* means the Director General of the Independent Office for Police Conduct.
- 4.5 *Working day* means any day other than a Saturday or Sunday or a bank holiday or a public holiday in England and Wales.
- 4.6 *Practice Requiring Improvement* means under-performance or conduct not amounting to misconduct or gross misconduct, which falls short of the standards as set out in the Police Staff Council Standards of Professional Behaviour.

### **5. PROVISION OF NOTICES OR DOCUMENTS**

- 5.1 Where any written notice or document is to be given or supplied to the individual under this procedure, it must be:
- Given in person to the individual

- Left with a person at, or sent by recorded delivery to, the last known address of the individual
- Given to the individual in any other manner agreed between the person who is required to give the notice or document and the individual, for example, by email.

5.2 Any notice or document is deemed to be served when it is delivered in accordance with paragraph 5.1. except where delivered by email, in which case acknowledgement of receipt is necessary.

## **6. TRADE UNION REPRESENTATIVE / WORKPLACE COMPANION**

### **6.1 THE HARM TEST**

Information in documents which are stated to be subject to the harm test under this procedure must not be supplied to the individual in so far as the Appropriate Authority considers that preventing disclosure to the individual is:

- Necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings
- Necessary in the interests of national security
- Necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders
- Necessary for the purpose of the prevention or detection of misconduct by other police staff members or police officers or the apprehension of such matters
- Necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- Otherwise in the public interest.

The individual has the right to consult with, and be represented by, a trade union representative or a workplace companion at all stages of the formal misconduct procedure.

A trade union representative or workplace companion will only be involved in a Reflective Practice Review Process in a supportive capacity; to provide encouragement and emotional support to the individual.

6.2 Any person acting as a trade union representative or workplace companion should be allowed to do so during normal working hours.

6.3 The trade union representative or workplace companion may:

- Advise and confer with the individual throughout the procedure

- Attend any meetings or interviews with the individual, which form part of the procedure
- Address the meeting or hearing to both state and sum up the individual's case
- Provide any relevant documentation to the investigator / person(s) conducting the misconduct proceedings who shall give full consideration to such documents
- Respond on the individual's behalf to any views expressed at the misconduct meeting or hearing
- During misconduct meetings or hearings, ask questions of any witness
- Make representations to the Appropriate Authority concerning any aspect of this procedure.

6.4 It is good practice to allow the trade union representative or workplace companion to participate as fully as possible, but at an interview, meeting or hearing the trade union representative or workplace companion is not there to answer questions on the individual's behalf. It is for the individual to speak for themselves when asked questions.

6.5 A trade union representative or workplace companion cannot be appointed to act as such if their presence might cause a conflict of interest (i.e. has had some involvement in the matter or is a witness to the alleged misconduct).

6.6 There is no right to legal representation at either a misconduct meeting or a misconduct hearing.

## **7. REFLECTIVE PRACTICE REVIEW PROCESS**

7.1 The Reflective Practice Review Process is not a misconduct outcome. It is a process for handling matters which, if proven, would amount to Practice Requiring Improvement. Where a matter, whether raised internally or via a complaint, meets the definition of Practice Requiring Improvement and does not reach the threshold for disciplinary action, it should be handled locally by line managers with a clear focus on reflection, learning from mistakes and focussing on actions / development to improve and, where necessary, put the issue right and prevent it from happening again.

7.2 An Appropriate Authority should determine whether the Reflective Practice Review Process is the most appropriate way of dealing with the issue.

7.3 A matter may also be referred to the Reflective Practice Review Process through a misconduct investigation, disciplinary procedure or by the Director General.

7.4 In a Reflective Practice Review Process the 'participating individual' is the member of staff whose actions or behaviour is subject to the Reflective Practice Review Process, and the 'reviewer' is the manager who is conducting the Reflective Practice Review

Process. The reviewer must be the line manager of the participating individual or another supervisor / manager who is senior to the participating individual.

7.5 Where a matter is referred to the Reflective Practice Review Process, the reviewer must as soon as practicable provide the following to the participating individual:

- Details of the matter that has been referred and the circumstances that are being considered, and
- An invitation to provide an account of the matter that has been referred for review.

The participating individual must provide any account within five working days of receiving the invitation to do so, unless a longer period is agreed with the reviewer. Where an account has previously been given e.g. during a previous investigation, it may not be necessary to require a further account, unless the participating individual wishes to provide further detail or clarification.

7.6 Enquiries made by the reviewer during the fact-finding stage must be reasonable, proportionate and relevant to the purpose, which is to establish the facts of the matter subject to the review process.

If at any time during the fact-finding stage substantial evidence becomes available to the reviewer, which was not available to the Appropriate Authority when it made its severity assessment, the reviewer must refer the matter to the Appropriate Authority for a further assessment.

7.7 The reviewer must, following completion of the fact-finding stage, invite the participating individual to attend a Reflective Practice Review Discussion. Such discussion must take place as soon as reasonably practicable.

The discussion must include:

- A discussion of the practice requiring improvement and related circumstances that have been identified
- Whether there are or were welfare considerations and wider factors, including the individual's personal circumstances that affected their behaviour
- The identification of key lessons to be learnt by the participating individual, line management or police force concerned, to address the matter and prevent a recurrence of the matter.

7.8 The reviewer must, following the completion of the discussion stage, produce a Reflective Review Development Report, which must contain:

- A summary of the issue and any relevant background circumstances
- A summary of the Reflective Practice Review Discussion
- Key actions to be undertaken by the participating individuals within a specified time period
- Any lessons identified for the participating individual
- Any lessons for the line management or police force concerned
- A specified period of time for reviewing the report and the actions taken.

The reviewer must send a copy of the report to the Appropriate Authority.

The Appropriate Authority must take appropriate action to ensure that any lessons identified for the line management or police force concerned are addressed.

A copy of the report, together with a note of the review of the report and of actions taken, must be retained on the participating individual's record.

The report and review notes may be discussed as part of the participating individual's performance and development review during the 12 month period following agreement of the report. Any discussion should focus on lessons learnt / actions to be taken.

If the reviewer:

- Considers that the participating individual is failing to engage with the Reflective Practice Review Process, or
- There is evidence of further practice requiring improvement on the part of the participating individual related to the matter that was referred to the process,

the reviewer may refer the matter for assessment by the Appropriate Authority.

7.9 Any account given by the participating individual during the Reflective Practice Review Discussion is not admissible in any subsequent disciplinary proceedings brought against the participating individual, except to the extent that it consists of an admission relating to a matter that has not been referred to be dealt with under the Reflective Practice Review Process. This protection provides a safeguard to allow the participating individual to participate openly and fully with the process and to reflect on their individual actions and / or behaviour. This is necessarily limited to the matters for which they have been referred to the Reflective Practice Review Process. This does not preclude an admission or account that suggested there may have been misconduct or gross misconduct from being referred to the Appropriate Authority for consideration and, if necessary, commencing a formal investigation. However, even if proceedings were to follow, the admission and any account would not be admissible in those proceedings.

## 8. FORMAL PROCEDURE

### **Severity Assessment – Is the matter potentially misconduct or gross misconduct?**

- 8.1 Where an allegation is made against an individual, an assessment will be made as to whether the conduct (if proved or admitted) would amount to misconduct or gross misconduct (see paragraph 4 for definitions).
- 8.2 The purpose of assessing whether a matter is potentially misconduct or gross misconduct is to:
- Allow the individual subject to the misconduct procedure to have an early indication of the possible outcome if the allegation is proven or admitted
  - Give an indication of how the matter should be handled (for example, locally or by the force Professional Standards Department or HR department).
- 8.3 Where it is determined that the conduct, if proved, would constitute **misconduct** (as defined at 4.1) it must be investigated.
- 8.4 Where it is determined that the conduct if proved, would constitute **gross misconduct** (as defined at 4.2) then it must be investigated
- 8.5 Where it is assessed that the conduct, if proved, would not constitute misconduct nor gross misconduct; then the Appropriate Authority should decide whether to take no action, whether a Reflective Practice Review Process is the most appropriate and proportionate response to the allegation, or whether to refer the matter to be dealt with under the force performance management procedures. This should be notified to the individual.
- 8.6 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 individual has a live final written warning at the time of the assessment and there is a further allegation of misconduct).
- 8.7 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 individual, where a further severity assessment is made which alters the original assessment then the individual will be informed and will be provided with the reasons for the change in the assessment.



8.8 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 individual will be informed that the matter is now not being considered as a matter of misconduct.

8.9 Where there are possible or outstanding criminal proceedings against the individual these will potentially delay the misconduct investigation. The presumption is that action for misconduct will possibly be taken prior to, or in parallel with, any criminal proceedings. Where potential prejudice to any criminal proceedings is identified the misconduct matter will still be investigated and a report submitted to the Appropriate Authority who will decide whether there is a case to answer in respect of misconduct or gross misconduct. If a decision is made that the matter amounts to misconduct or gross misconduct, and consequently, the Reflective Practice Review Process is not appropriate, no referral to disciplinary proceedings will take place if this would prejudice the criminal proceedings.

## **9. INVESTIGATION**

9.1 Individuals have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally.

9.2 If a matter has been assessed as either misconduct or gross misconduct, then the Appropriate Authority will appoint a person to investigate the matter. The investigator should be a person who has the appropriate level of knowledge, skills and experience to plan and manage the investigation.

9.3 A misconduct investigation shall be proportionate to the nature and gravity of the allegations.

9.4 The purpose of the investigation is to:

- Gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct
- Assist the Appropriate Authority (or Director General of the IOPC) to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer
- Identify any learning for the individual or organisation as a whole.

9.5 The investigator will as soon as reasonably practicable after being appointed, cause the individual to be given written notice of the allegation which will set out the following information:

(A standard notice template is attached at Annex A)

- Inform the individual that there is to be an investigation of their potential breach of the PSC Standards of Professional Behaviour and inform the individual of the name of the investigator who will investigate the matter
- Describe the conduct that is the subject of the investigation and how the conduct is alleged to have fallen below the PSC Standards of Professional Behaviour
- Inform the individual of the force's assessment of whether the conduct alleged, if proved, would amount to misconduct or gross misconduct
- Inform the individual of whether, if the case were to be referred to misconduct proceedings, those proceedings would be a misconduct meeting or misconduct hearing
- Inform the individual that if the likely form of any misconduct proceedings changes the individual will be notified of this together with the reasons for that change
- Inform the individual of their right to seek advice from their trade union or a workplace companion who the individual may choose to act as their representative.

- 9.6 The notice should clearly describe in unambiguous language the particulars of the conduct that it is alleged fell below the standards expected of the individual.
- 9.7 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 individual and to their trade union representative or workplace companion on request, and they should be informed if the terms of reference change.
- 9.8 The written notification may be provided to a manager (including by email) to give to the individual. The notice should ordinarily be given to the individual in person. In cases where this is not possible the notice should be sent by recorded delivery to their last known address. The responsibility for ensuring the notice is served rests with the investigator.
- 9.9 The investigator should ensure that the individual 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 individual will be recorded and kept under regular review in order to avoid unreasonable delay in notifying the individual.
- 9.10 Where the IOPC is conducting an independent or directed investigation then the responsibility for ensuring that the individual is provided with the written notification (as soon as practicable) rests with the investigator appointed or designated to conduct that investigation.

- 9.11 In the interests of fairness, care should be taken where an incident is being investigated to ensure that the notification is given to the individual as soon as practicable after an investigator is appointed (subject to any prejudice to that or any other investigation).
- 9.12 If at any time after the service of the notice the Appropriate Authority revises the assessment of the conduct or the level of the misconduct proceedings, then as soon as practicable the individual shall be given a further written notice.
- 9.13 Prejudice Test - potential examples of 'prejudice' are:
- Where there is more than one individual under investigation and providing full terms would prejudice / taint the other investigation,
  - Where there are witnesses to be spoken to or urgent actions to be taken and it would prejudice the investigation if the individual knew of these in advance,
  - Where there are covert / sensitive tactics being employed.

## **10. INVESTIGATION INTERVIEW / WRITTEN RESPONSE**

- 10.1 It will not always be necessary to conduct a formal interview with the police staff member subject of the investigation. In some cases, possibly involving misconduct cases, it may be more appropriate, proportionate and timely to request a written account from the individual. The written response together with any supporting documentation should be provided by the individual to the Appropriate Authority within 10 working days, commencing the first working day following service of the formal notice of the investigation.

Where an interview with the individual is necessary, the investigator and the individual should agree a date and time for the interview. The trade union representative or workplace companion should also be consulted and allowed to make representations about the date and time of the interview. If no agreement can be reached then the investigator may specify a time and date, giving at least 10 working days advance notice of the time and date. If the individual or their trade union representative or workplace companion is not available on the specified date then the interview can be postponed to a time proposed by the individual provided it is reasonable and within five working days of the specified date. Interviews may be audio recorded if appropriate and agreed (for example in complex cases), or a written record taken of the interview which the individual will have the opportunity to comment on and agree as being an accurate record of the interview.

- 10.2 The individual shall be given a written notice, by the investigator, at least 10 working days in advance of the date, time and place of the interview which the individual must attend. The interview cannot take place where the individual has not received the terms

of reference for their investigation, or the written notice which states that no terms will be given. The individual shall also be advised of the right to be accompanied by a trade union representative or workplace companion and if so accompanied it shall be pointed out that this person may not answer any questions asked of the individual during the interview.

- 10.3 The investigator will, at least 10 working days in advance of the interview, provide the individual with such information as the investigator considers appropriate in the circumstances of the case to enable the individual to prepare for the interview. This should normally be full disclosure.
- 10.4 Documentary evidence shall be subject to the harm test and will not be supplied to the individual if the investigator considers that preventing disclosure is necessary:
- To prevent the premature or inappropriate disclosure of information that is relevant to or may be used in any criminal proceedings
  - In the interests of national security
  - For the prevention or detection of crime or the apprehension or prosecution of offenders
  - For the prevention or detection of misconduct by other police officers or police staff or their apprehension for such matters
  - Necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
  - Otherwise in the public interest.

It is, however, best practice in these investigations to have an approach to disclosure of evidence that, subject to the harm test or prejudice test, is full and open, providing the individual the opportunity to consider the evidence and provide a full and meaningful response at interview.

- 10.5 The investigator will notify the individual of the progress of the investigation at least every four weeks commencing from the date of service of the notice of investigation.
- 10.6 Where an investigation is not completed within a 12 month period beginning on the day the allegation first came to the attention of the appropriate authority; the appropriate authority must provide the following information in writing to the local policing body. This should describe the progress of the investigation, the planned steps to progress the investigation and bring it to a conclusion and an estimate of when the investigation will be concluded.

A further report should be submitted after each subsequent period of six months.

This requirement does not apply in a case where it appears to the appropriate authority that to do so might prejudice the investigation or any other investigation (including a criminal investigation).

Subject to the harm test, a copy of the information provided to the local policing body must be sent to the individual.

## **11. INVESTIGATION REPORT**

11.1 The misconduct investigation shall only be deemed as completed when the Appropriate Authority is satisfied that all the issues have been fully addressed and the investigator's report conforms to the required standard. To achieve this standard the report should:

- Provide an accurate and objective summary of the evidence
- Attach or refer to any relevant documents, and
- 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.

Where the investigator's opinion is that there is no case to answer, the investigator should indicate their opinion as to whether the matter should be referred to be dealt with under the performance procedures or the Reflective Practice Review Process.

11.2 When the Appropriate Authority is satisfied that the investigation is complete it will determine whether the individual has a case to answer. Where it is determined that there is no case to answer under misconduct or gross misconduct, the Appropriate Authority may:

- Take no further action
- Refer the matter to be dealt with under the Reflective Practice Review Process, or,
- Refer the matter to be dealt with under the force performance management procedures.

11.3 Where it is determined that there is a case to answer in respect of misconduct then the matter will be referred to a misconduct meeting. Where it is determined that there is a case to answer in respect of gross misconduct then the case shall be referred to a misconduct hearing.

11.4 Upon receiving the investigator's report, the Appropriate Authority shall as soon as reasonably practicable inform the individual of its determination. Where no determination has been made within 15 working days of the completion of the investigation then the Appropriate Authority will notify the individual together with reasons why a determination has not been made.

11.5 Upon making a determination that the matter is to be referred to misconduct proceedings the Appropriate Authority shall as soon as reasonably practicable ensure the individual receives a written notice with the following information:

- Notification of the referral to a misconduct meeting or hearing
- Details of the alleged conduct and how it amounts to misconduct or gross misconduct
- The name of the person(s) appointed to conduct the misconduct meeting or hearing and the adviser to it (if applicable)
- A copy of any statement the individual may have made to the investigator
- Subject to the harm test – a copy of the investigation report or parts thereof (together with any documents attached to or referred to in that report as related to the individual)
- Any other relevant document gathered during the course of the investigation
- Advised of the right to be represented by a trade union representative or workplace companion.

## 12. TYPES OF MISCONDUCT PROCEEDINGS

12.1 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 individual 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 force without notice.

12.2 It is important that misconduct hearings are only used for those matters where the individual 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 it is genuinely considered that if proven or admitted dismissal from the police force would be justified.

## 13. MISCONDUCT MEETING / HEARING

13.1 A misconduct meeting will be conducted by:

- A senior manager (if this is a police officer it must be a substantive Chief Inspector or above) with an understanding of police staff employment matters who has had no previous involvement in the case.

- 13.2 A HR advisor, who has not had previous involvement in the case, may attend to advise on procedural matters only.
- 13.3 A misconduct hearing should be conducted by up to, but not exceeding, three people who have not had any previous involvement in the case:

Where one person is conducting the hearing:

- They should be a senior Human Resources professional. A senior HR professional means a human resources professional who in the opinion of the Appropriate Authority has sufficient seniority, skills and experience to conduct the misconduct hearing
- A HR advisor should attend to provide procedural support only.

Where more than one person is conducting the hearing:

- The chair should be either a senior officer (ACC or above) or a senior Human Resources Professional
- The other members of the panel should consist of either a police officer of Superintendent rank or above, a senior HR professional or senior police staff managers
- There should be at least one senior HR Professional on the panel
- A HR advisor may attend to provide procedural support only.

- 13.4 Following service of the notice of referral to a meeting / hearing the individual may object to the person(s) appointed to conduct the meeting / hearing or any person named who will advise at the meeting / hearing. Any objection must be provided in writing and submitted to the Appropriate Authority within three working days commencing the first working day following service of the referral notice, setting out the grounds for objection. The Appropriate Authority will notify the individual whether it upholds or rejects the objections. If the objections are upheld the person(s) to whom the individual objects will be replaced and the individual will be advised of the replacement person(s).

The individual may object to the replacement person(s) appointed to conduct the meeting / hearing or any person named who will advise at the meeting / hearing. Any objection must be provided in writing and submitted to the Appropriate Authority within three working days commencing the first working day following service of the referral notice, setting out the grounds for objection. If the objections are upheld the replacement person(s) to whom the individual objects will be replaced. The individual will be advised of the intended replacement.

13.5 Within 15 working days commencing the first working day following service of the referral to a meeting / hearing, the individual may provide the following:

- Written notice of whether or not they accept that their conduct amounts to misconduct or gross misconduct as the case may be

Where the individual accepts that their conduct amounts to misconduct or gross misconduct as the case may be, any written submission they wish to make in mitigation

Where the individual does not accept that their conduct amounts to misconduct or gross misconduct as the case may be, or they dispute part of the case against them, written notice of:

- the allegation they dispute and their account of the relevant events; and
- any arguments on points of law which they wish to be considered.
- A copy of any document to be relied upon during the misconduct proceedings.

13.6 Forces should develop, in consultation with their recognised trade unions, a set process that will be followed in misconduct meetings and misconduct hearings. Generally speaking a meeting / hearing will be conducted with witnesses. Where there are proposed witnesses the individual and the investigator will submit details of proposed witnesses to the Appropriate Authority who will supply the list to the person(s) conducting the meeting / hearing. The list will include brief details of the evidence the witnesses are able to provide and their name and address, where appropriate.

13.7 Where a relevant witness is required to attend, and if that person is a police officer they will be ordered to attend, all other relevant witnesses required to attend will be given written notice that their attendance at the meeting / hearing is necessary.

13.8 A misconduct meeting will take place no later than 20 working days commencing with the first working day following response to the service of the notice of referral to the misconduct meeting as per paragraph 13.5.

13.9 A misconduct hearing will take place no later than 30 working days commencing with the first working day following response to the service of the notice of referral to the misconduct hearing. This period may be extended by the person(s) conducting the meeting / hearing if they consider it necessary in the interests of justice as per paragraph 13.5.

13.10 If reasonably practicable the date and time of the meeting / hearing should be agreed with the individual. At least 10 working days notice must be given of any meeting / hearing. If no agreement can be reached then the person(s) conducting the meeting /



hearing will set a date and time. Once the date and time has been agreed or set by the person(s) conducting the meeting / hearing the Appropriate Authority shall provide the individual with a written notice giving details of the date and time of the meeting / hearing at least 10 working days in advance of any such meeting / hearing.

- 13.11 If the individual or their trade union representative or workplace companion is unable to attend the meeting / hearing then the individual can propose an alternative date and time which must be reasonable and within five working days of the previously specified date. In such circumstances and if reasonable, the meeting / hearing should be held on the proposed alternative date and the Appropriate Authority will provide an amended notice to the individual.
- 13.12 The individual and the person(s) conducting the meeting / hearing will be supplied with the same documents at least 10 working days in advance of the meeting / hearing. Prior to the meeting / hearing, the person(s) conducting the proceedings must fully appraise themselves of all the evidential and procedural issues set out in the documentation. The documents supplied by the Appropriate Authority are:
- Written notice of the referral
  - The conduct that is the subject of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be
  - A copy of any statement they may have made to the investigator during the course of the investigation and
  - Subject to the harm test, a copy of the investigator's report or such parts of that report as relate to them (together with any document attached to or referred to in that report as relates to them) and any other relevant document gathered during the course of the investigation
  - Documents provided by the individual in response to the notice of referral to a meeting / hearing
  - Where the individual does not accept that their conduct amounts to misconduct or gross misconduct or where they dispute any part of the case, any other documents that in the opinion of the appropriate authority should be considered at the misconduct proceedings.
- 13.13 If the individual is a trade union representative then subject to the consent of the individual, the person(s) conducting the meeting / hearing should discuss the case with a senior trade union representative or a full time official of the trade union concerned in order to avoid the perception that the proceedings are an attack on the union.
- 13.14 Once the date and time of the meeting / hearing has been agreed or specified, the individual shall attend the meeting / hearing. If the individual is unable to attend and the person(s) conducting the meeting / hearing considers the grounds to be reasonable, the

individual may be allowed to participate in the meeting / hearing by other means (for example by a conference telephone call) or the meeting / hearing may be postponed.

- 13.15 If the individual fails to attend the meeting / hearing they may still be represented by a trade union representative or workplace companion. Where the individual fails to attend the meeting / hearing without good cause then the case may still proceed and be concluded in their absence. When making a determination to proceed without the presence of the individual the person(s) conducting the meeting / hearing shall take into consideration the nature of the allegation, the individual's misconduct record and any medical opinion on whether the person is fit to attend the meeting / hearing.
- 13.16 Where an individual raises a grievance during the misconduct proceedings the proceedings may (if appropriate) be temporarily suspended in order to deal with the grievance. Where the grievance and misconduct proceedings are related, it may be appropriate to deal with both issues concurrently. The misconduct procedures should be capable of dealing with issues relating to those proceedings. For example, if the grievance related to the person(s) appointed to hear the matter at a meeting / hearing then the provision will exist to object to that person and therefore the reason for the grievance will have been resolved.
- 13.17 A record will be made of the meeting / hearing and this may include by means of audio digital recording.

#### **14. OUTCOME OF MEETINGS/HEARINGS**

- 14.1 If the person(s) conducting the meeting / hearing finds that the individual's conduct did fail to meet the PSC Standards of Professional Behaviour then the person(s) conducting the meeting / hearing will then determine the most appropriate outcome.
- 14.2 In considering the question of outcome the person(s) conducting the meeting / hearing will need to take into account any previous written warnings 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 individual's record of service, including any previous live misconduct outcomes.
- 14.3 The person(s) conducting the proceedings is also entitled to take account of any early admission of the conduct on behalf of the individual and attach whatever weight to this as they consider appropriate in the circumstances of the case.
- 14.4 In addition, the individual and their trade union representative or workplace companion should be given the opportunity to make representations on the question of the most appropriate outcome of the case.

14.5 The person(s) conducting the proceedings shall provide a written notice of the finding and outcome to the individual as soon as practicable after the conclusion of the meeting / hearing and in any case within three working days. The written notice shall set out the finding of the person(s) conducting the meeting / hearing, any disciplinary outcome imposed and the right to appeal against the finding and / or outcome.

14.6 A previous written warning is 'live' for the purposes of misconduct proceedings if it had not expired on the date upon which the report of the alleged misconduct or gross misconduct is assessed and not the date upon which the actual misconduct meeting or misconduct hearing is held.

## **15. OUTCOMES AVAILABLE AT MISCONDUCT MEETING**

15.1 Where the person(s) conducting the meeting finds that the conduct does not amount to misconduct, they may direct the matter to be referred to the Reflective Practice Review Process or take no further action. Where they find that conduct amounts to misconduct they may impose the following sanctions:

- Written warning
- Final written warning

15.2 Where on the date of the severity assessment the individual had a written warning in force, a written warning should not be given.

15.3 Written warnings shall remain live on the personal file of the individual for a period of up to 12 months from the date the warning is given. This means that following a written warning, any finding of misconduct in the next 12 months is likely to lead to a final written warning.

15.4 Final written warnings will remain live on file for a period of 1 year from the date the final written warning is given. This may be extended, by the person considering the question of disciplinary action, to a maximum period of 2 years in exceptional circumstances. Any future misconduct following a final written warning whilst that warning is 'live' may result in dismissal.

## **16. OUTCOMES AVAILABLE AT MISCONDUCT HEARING**

- Not proven
- No further action
- Reflective Practice Review Process
- Written warning

- Final written warning
- Dismissal
- Summary Dismissal

Where the person(s) conducting the hearing finds that the conduct does not amount to misconduct or gross misconduct, they may direct the matter to be referred to the Reflective Practice Review Process or take no further action.

## **17. APPEALS AGAINST FINDINGS OF MISCONDUCT MEETING**

- 17.1 An appeal against the finding and / or the outcome from a misconduct meeting will be heard by a police officer or police staff manager who in the opinion of the Appropriate Authority is considered to be of a higher rank or grade than the person who conducted the misconduct meeting and who has had no previous involvement in the investigation of the case or in the misconduct meeting.
- 17.2 In addition, a HR advisor totally unconnected with the case may also be present to advise the person conducting the appeal on procedural matters only.
- 17.3 If the misconduct was admitted, the individual may only appeal against the outcome. If the misconduct was denied, the individual may appeal against both the finding and / or the outcome.
- 17.4 The individual must give written notice of appeal stating the grounds for appeal to the Appropriate Authority before the end of seven working days commencing the first working day following service of the notice of outcome (unless this period is extended by the Appropriate Authority in exceptional circumstances).
- 17.5 The grounds for appeal are as follows:
- The finding and / or outcome imposed was unreasonable
  - There is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on outcome
  - That there was a serious breach of procedures or other unfairness which could have materially affected the finding or decision on outcome.
- 17.6 Following receipt of the notice of appeal, the Appropriate Authority shall as soon as practicable give the individual written notice of the appeal meeting and the person appointed to hear the appeal and the person appointed to act as advisor (if applicable). The individual may object to the person appointed to conduct the appeal meeting or the person named to act as advisor. Any objection must be provided in writing and submitted

to the Appropriate Authority within three working days commencing the first working day following service of the notice of appeal meeting. The Appropriate Authority will notify the individual whether they uphold or reject the objections. If the objections are upheld the person(s) to whom the individual objects will be replaced.

- 17.7 Where the person(s) appointed to conduct an appeal meeting is replaced, the individual may object to the person(s) appointed to conduct the appeal meeting or any person named who will advise at the appeal meeting. Any objection must be provided in writing and submitted to the Appropriate Authority within three working days commencing the first working day following service of the referral notice, setting out the grounds for objection. The Appropriate Authority will notify the individual whether it upholds or rejects the objections. If the objections are upheld the person(s) to whom the individual objects will be replaced. No further objections will be permitted.

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

- The notice of appeal from the individual setting out the grounds of appeal
- The record of the original misconduct meeting
- The documents that were given to the person who held the original misconduct meeting
- Any evidence that the individual wishes to submit in support of their appeal that was not considered at the misconduct meeting

- 17.8 The person appointed to deal with the appeal will hold an appeal meeting within 10 working days of the receipt of the appeal by the individual. The individual has the right to be represented by a trade union representative or workplace companion at the appeal meeting. If the individual fails to attend the meeting without good cause then the person conducting the appeal may proceed in their absence.

- 17.9 If the individual and / or trade union representative or workplace companion is not available at the date or time specified by the persons conducting the appeal, the individual may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of five working days beginning with the first working day after that proposed by the persons conducting the appeal, the appeal should be postponed to that time.

- 17.10 The person conducting the appeal may consider:

- 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

- Any outcome imposed by the misconduct meeting which may be considered as too severe having regard to all the circumstances of the case
- Whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the individual (although the persons conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).

17.11 The person determining the appeal may confirm or reverse the decision appealed against.

17.12 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.

17.13 The individual shall be notified in writing by or on behalf of the person conducting the appeal meeting, giving details of the determination of the appeal within three working days of the conclusion of the appeal meeting.

## **18. APPEALS AGAINST FINDINGS OF MISCONDUCT HEARING**

18.1 The appeal process for an individual following a misconduct hearing is governed by the final outcome.

18.2 The appeal will be heard by the Head of Human Resources or a senior officer (ACC or above) and a HR professional. All must be of higher rank or grade than the persons who conducted the misconduct hearing and who have had no previous involvement in the investigation of the case or in the misconduct hearing which followed.

18.3 If the misconduct was admitted, the individual may only appeal against the misconduct hearing outcome. If the misconduct was denied, the individual may appeal against both the finding and / or the misconduct outcome.

18.4 The individual must give written notice of appeal stating the grounds for appeal to the Appropriate Authority within seven working days commencing the first working day following service of the notice of outcome (unless this period is extended by the Appropriate Authority in exceptional circumstances).

18.5 The grounds for appeal are as follows:

- The finding and / or misconduct outcome was unreasonable

- There is evidence that could not reasonably have been considered at the misconduct hearing which could have materially affected the finding or decision on misconduct action
- That there was a serious breach of procedures or other unfairness which could have materially affected the finding or decision on misconduct action.

18.6 Following receipt of the notice of appeal, the Appropriate Authority shall as soon as practicable give the individual written notice of the appeal meeting and the persons appointed to hear the appeal. The individual may object to any of the persons appointed to conduct the appeal meeting. Any objection must be provided in writing and submitted to the Appropriate Authority within three working days commencing the first working day following service of the notice of appeal meeting. The Appropriate Authority will notify the individual whether they uphold or reject the objections. If the objections are upheld the person(s) to whom the individual objects will be replaced and the individual will be advised of the replacement person(s).

The individual may object to the replacement person(s) appointed to conduct the meeting / hearing or any person named who will advise at the meeting / hearing. Any objection must be provided in writing and submitted to the Appropriate Authority within three working days commencing the first working day following receipt of the referral notice, setting out the grounds for objection. If the objections are upheld the replacement person(s) to whom the individual objects will be replaced.

No further objections to the appointed person(s) will be considered.

18.7 The persons appointed to deal with the appeal will hold an appeal meeting within 10 working days of the receipt of the appeal by the individual. The individual has the right to be represented by a trade union representative or workplace companion at an appeal meeting. Where the individual fails to attend the meeting without good cause, the persons conducting the appeal may proceed in their absence.

18.8 Following the determination to hold an appeal meeting, the persons appointed to conduct the appeal and the individual should seek to agree the date and time of the appeal meeting. If no date and time can be agreed then the persons appointed to hear the appeal shall specify a date and time. If the individual and / or the trade union representative or workplace companion is not available at the date or time specified by the persons conducting the appeal, the individual may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of five working days beginning with the first working day after the previously specified date and time, the appeal must be postponed to that time.

18.9 The persons determining the appeal will be provided with the following documents:

- The notice of appeal from the individual setting out the grounds of appeal
- The record of the original misconduct hearing
- The documents that were given to the persons who held the original misconduct hearing
- Any evidence that the individual wishes to submit in support of their appeal that was not considered at the misconduct hearing.

18.10 The persons conducting the appeal may consider:

- Whether the finding of the original misconduct hearing 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 original hearing
- Any outcome imposed by the misconduct hearing which may be considered as too severe having regard to all the circumstances of the case
- Whether the finding or outcome could be unsafe due to procedural unfairness and prejudice to the individual (although the person conducting the appeal must also take into account whether the unfairness or prejudice could have materially influenced the outcome).

18.11 The persons determining the appeal may confirm or reverse the decision appealed against.

18.12 An appeal is not a repeat of the misconduct hearing. 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.

## **19. SUSPENSION**

19.1 An individual may be suspended from work. Suspension must be authorised by the Head of HR or a senior officer (ACC or above), although the decision may be communicated to the individual by an appropriate manager. Suspension will only take place after careful consideration of all the facts and shall be for the shortest possible period. The decision to suspend an individual is not a presumption of guilt and should not be seen as misconduct action against the individual.

19.2 Suspension will be with full pay and allowances.

19.3 Where practicable, a temporary move to a new location or an appropriate role within relevant and existing terms of employment must be considered first as an alternative to suspension.

19.4 The individual shall not be suspended from work unless the following conditions apply:



- Temporary redeployment to alternative duties or an alternative location is not appropriate in all the circumstances of the case
- It would prejudice the effective investigation of the case if the individual was not suspended
- The public interest regarding the nature of the allegation and other relevant consideration requires that they should be suspended.

19.5 Reasonable grounds for considering that the effective investigation might be prejudiced will include concern that the gathering of evidence could be compromised or witnesses tainted.

19.6 Where it is considered necessary to suspend an individual, a meeting shall take place with the individual to inform them of the reason(s) why the suspension is taking place. The individual must be given the opportunity to have a trade union representative or workplace companion present at this meeting.

19.7 Notification of suspension from work may be given orally or in writing. If given orally it will be confirmed in writing within three working days setting out the conditions of the suspension and details of the appointed liaison officer who will be the main point of contact for the individual during suspension. The appointed liaison officer should have no involvement in the allegation against the individual or associated events. The written notice shall contain the following information:

- That during the period of suspension they will receive their full pay entitlement including any allowances applicable at the time as defined in their conditions of service
- That they must remain available for interview and must obtain permission before taking leave away from home
- That suspension is not a presumption of guilt and should not be seen as misconduct action against them.

19.8 The individual, or their trade union representative or a workplace companion, may make representations against their suspension to the Appropriate Authority within seven working days of being suspended or at any time during the suspension if they believe that the relevant circumstances have changed.

19.9 The Appropriate Authority will review the decision to suspend the individual on a four weekly basis, or sooner where facts become known which would suggest that suspension is no longer appropriate, or at any time following receipt of formal representation from the individual. Following a review of the suspension conditions the

individual shall, within three working days, be notified of the outcome. If the suspension conditions remain satisfied the individual shall be given a summary of the reasons.

- 19.10 An individual suspended from work shall still be allowed to take their annual leave entitlement in the normal way provided they seek permission from the Appropriate Authority. This can be delegated as appropriate.
- 19.11 The individual may be suspended from employment at any time and will stay suspended until:
- It is decided that the conduct of the individual shall not be referred to a meeting / hearing
  - The reasons for suspension no longer apply and there are no other valid reasons for suspension
  - Such proceedings have been concluded.

**POLICE STAFF ONLY**

**Notice of alleged breach of the Standards of Professional Behaviour**

Name:

Employee  
number:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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.

The details of your conduct that it is alleged may have breached the Standards of Professional Behaviour can be found below. (See notes overleaf).

**The allegation has been assessed based on the information available at this time and if proven or admitted would amount 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:

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I acknowledge that I have received a copy of this document and my attention has been drawn to the accompanying notes.

Signature of individual concerned. \_\_\_\_\_ Date:

Print name \_\_\_\_\_

I authorise a copy of this notice be forwarded to my Trade Union.  Yes  No

Signature of individual concerned.  
\_\_\_\_\_

If the notice is not given to the individual by the person investigating please append the name and signature of the person giving the notice below: -

Name:  
Date:

Signature:

### **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 force misconduct procedures.
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 trade union or a workplace companion and be advised, represented and accompanied to any interview, meeting or hearing by a trade union representative or workplace companion who is not otherwise involved in the matter.

4. If following service of this notice the assessment of conduct or the determination of the likely form of any misconduct proceedings taken is revised then as soon as practicable you will be given a further written notice together with reasons for that change.
5. Prior to being interviewed or asked to provide a written response you will be provided with sufficient information and time to prepare for the interview / prepare your response. The information provided should always include full details of the allegations made against you, including the relevant date(s) and place(s) of the alleged misconduct. You should normally be provided with all relevant evidence obtained.
6. At the conclusion of the investigation, if it is decided that there is no case to answer then upon request you shall, subject to a harm test, be provided with a copy of the investigator's report or such parts of that report as relate to you.
7. Where the case is referred to a misconduct meeting or hearing you will be given written notice of the referral, a copy of any statement made by you to the investigator, a copy, subject to a 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.
8. 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 a misconduct meeting or hearing will be based on an objective assessment of all the evidence provided during the course of the investigation. If the case is referred to a misconduct meeting or hearing, then any decision on findings of fact will be determined on the standard of proof required in civil cases, which is the balance of probabilities.
9. Outcomes available in misconduct proceedings:

#### **Misconduct – Misconduct Meeting**

- Not proven
- No further action
- Reflective Practice Review Process
- Written warning
- Final written warning

## **Gross Misconduct – Misconduct Hearing**

- Not proven
- No further action
- Reflective Practice Review Process
- Written warning
- Final written warning
- Dismissal
- Summary Dismissal