Home Office

Home Office Guidance

Conduct, Efficiency and Effectiveness:

Statutory Guidance on Professional Standards, Performance and Integrity in Policing

Version 1.0

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About this guidance

This guidance tells practitioners, decision makers and those operating within the Professional Standards environment about the processes and procedures concerning the handling of complaints, conduct matters and deaths and serious injuries, including how they should be investigated and how subsequent proceedings should be brought.

It can also be used by those who are subject or party to investigations and proceedings to understand these processes and provisions.

It deals with performance matters, including gross incompetence, as well as the new Reflective Practice Review Process, which focuses on learning and improvement.

The guidance should be understood by all individuals who serve within policing in respect of the Standards of Professional Behaviour and line managers or supervisors who have responsibilities within the relevant processes outlined within.

This guidance is published in accordance with Section 87 and 87A of the Police Act 1996. There is also an additional non-statutory section of guidance which deals with appeals, appended at the end of this document.

Contacts

If you have any questions about this guidance, please contact the Police Integrity Unit at the Home Office at: police.discipline@homeoffice.gov.uk

Publication

This guidance concerns the handling of matters that fall within the regulatory framework from 1 February 2020.

It accompanies the following Regulations:

- Police (Conduct) Regulations 2020
- Police (Complaints and Misconduct) Regulations 2020
- Police (Performance) Regulations 2020
- Police Appeals Tribunal Rules 2020
- Police Barred List and Police Advisory List Regulations 2017

This is Version 1 of the guidance, published by the Home Secretary on 5 February 2020.

Related external links

Relevant documents and guidance

- College of Policing Code of Ethics
- College of Policing Guidance on outcomes in police misconduct proceedings
- IOPC Statutory Guidance

SECTION 1: INTRODUCTION

This section contains guidance about the legal framework that applies to persons serving with the police related to complaints and conduct matters and how they should be handled. It sets out and explains the Standards of Professional Behaviour and how individuals should raise concerns or make a protected disclosure. It sets out the principles and purpose of different forms of proceedings.	Page number
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SECTION 1: INTRODUCTION

CHAPTER 1: BACKGROUND & APPLICATION

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The 2020 Police Conduct, Efficiency and Effectiveness guidance, how the guidance should be applied and used, as well as its legal status.

IT INCLUDES GUIDANCE ABOUT

- Introduction and Scope
- Legal powers for the publication and application of this guidance
- Who the guidance applies to and how it should be used
- Consultation
- Structure, use and interpretation

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authorities and those exercising appropriate authority decision making powers
- Investigators
- Chief Constables
- Local Policing Bodies
- Police Officers (Members of police forces and special constables), civilian employees and designated policing volunteers
- The Director General and staff of the Independent Office for Police Conduct

INTRODUCTION AND SCOPE

1.1 This guidance is published by the Home Office on behalf of the Secretary of State and relates to the processes and procedures for handling matters linked to complaints, internal allegations and other matters related to the conduct of police officers and other individuals serving with the police. It sets out how such matters should be handled including conducting investigations, subsequent proceedings and actions arising to address any issues or matters that come to light following allegations or during subsequent investigations.

1.2 The guidance sets out the Standards of Professional Behaviour that apply to all police officers in England and Wales and what should happen if there is an allegation or complaint that these standards have been breached by an officer (including in a manner that would justify the bringing of disciplinary proceedings) or if they are not performing to the expected standards or if attendance is unsatisfactory.

1.3 The guidance sets out the handling of lower level matters related to an individual's behaviour, performance or conduct through the Reflective Practice Review Process as well as the processes and requirements for bringing formal disciplinary and performance procedures against individual officers. There is additional non-statutory guidance at the end of this document which covers the procedure for the bringing of appeals and their administration.

1.4 The procedures described in this guidance are designed to accord with the principles of natural justice and the basic principles of fairness. The process and procedures covered by this guidance, along with the accompanying legal framework, should be administered accordingly and applied fairly and consistently to everyone. The guidance on the individual procedures is designed to further the aims of being fair to the individual who is subject to the process, as well as all parties involved. It is intended to assist with arriving at a correct assessment of the matter in question and providing public and policing confidence in the system.

1.5 It should be noted that misconduct and performance procedures should be dealt with at the lowest appropriate managerial level, having regard to all the circumstances of the matter.

1.6 Guidance is also issued by the Independent Office for Police Conduct (IOPC) in statutory and non-statutory form in relation to the handling of complaints and other matters that fall within scope of the Police Reform Act 2002 (the 2002 Act). The provisions of this document should therefore, where appropriate, be considered alongside that and other statutory guidance, including:

- The College of Policing's Code of Ethics,
- The College of Policing's Guidance on Outcomes in Police Misconduct Proceedings.

LEGAL POWERS FOR THE PUBLICATION AND APPLICATION OF THIS GUIDANCE

1.7 This guidance is issued by the Home Secretary in accordance with Section 87 and 87A of the Police Act 1996.

1.8 This guidance should be read alongside the relevant parts of the legal framework that covers the handling of complaints, conduct matters, performance matters and deaths or serious injury matters (DSI matters):

- Part 2 and Schedule 3 to the Police Reform Act 2002
- Police (Conduct) Regulations 2020
- Police (Complaints and Misconduct) Regulations 2020
- Police (Performance) Regulations 2020
- Police Appeals Tribunal Rules 2020
- Police Barred List and Police Advisory List Regulations 2017

Cases dealt with under Part 2 of, and Schedule 3 to, the 2002 Act (Complaints, Recordable Conduct Matters and Death or Serious Injury (DSI) Matters)

1.9 If a complaint is made to, or a Recordable Conduct Matter or DSI comes to the attention of, a local policing body, a chief officer or the IOPC on or prior to 31st January 2020 it should be handled as a "pre-commencement" case in accordance with the 2012 legal framework i.e. the version of the 2002 Act in force at that point in time, the associated regulations including the 2012 Complaints Regulations, and the version of the IOPC's Statutory Guidance that applied at that time. This guidance, and the 2020 IOPC Statutory Guidance, should not be used or applied.

1.10 The Policing and Crime Act 2017 includes provisions to amend Part 2 and Schedule 3 to the 2002 Act. The relevant provisions in the 2017 Act come into force on 1st February 2020, alongside new Complaints Regulations and new IOPC Statutory Guidance. This 2020 framework should be applied to any complaint made on or after 1st February 2020 and to any Recordable Conduct Matter or DSI that comes to the attention of an appropriate authority on or after that date ("post-

commencement" cases). It is essential that the amended Part 2 and Schedule 3 and the new Complaints Regulations are used for these cases.

1.11 There are certain circumstances where the "old" regime will apply to "new" cases. This will occur where a complaint is made, or a conduct matter or DSI matter comes to the attention of the appropriate authority on or after 1st February 2020 and it relates to a pre-commencement complaint or matter and that pre-commencement complaint or matter is still being handled in accordance with Schedule 3 to the 2002 Act.

1.12 In addition, there are two specific circumstances where the new post-1st February 2020 legislative framework will apply, regardless of when the complaint was made or the Recordable Conduct Matter or DSI matter came to the attention of the appropriate authority. First, where the Director General determines under **section 13B** of the 2002 Act that a complaint, Recordable Conduct Matter or DSI matter is to be re-investigated. Second, where the Director General makes a direction under **section 28A(1) or (4)** of the 2002 Act (Old Cases) in relation to a matter on or after 1st February 2020.

Cases dealt with under the Conduct Regulations

1.13 Where an allegation against a police officer (a member of a police force or special constable) comes to the attention of a local policing body or chief officer on or prior to 31 January 2020 (a "pre-commencement allegation") it should be handled under the 2012 Conduct Regulations and the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures that applied at that time. This guidance should not be used or applied.

1.14 Where an allegation against a police officer comes to the attention of a local policing body or a chief officer of police on or after 1st February 2020 (a post-commencement allegation) the Conduct Regulations 2020 apply together with this guidance. There are certain circumstances where the "old" regime will apply to "new" cases. This will occur where an allegation comes to the attention of the appropriate authority on or after 1st February 2020 and it relates to a pre-commencement matter and that pre-commencement matter is still being handled in accordance with the 2012 conduct regime or Part 2 of the 2002 Act.

1.15 The guidance does not replace or supersede provisions set out in Regulations or elsewhere in legislation. In the event of a conflict between this guidance and the underlying legislation, the legislation has precedence. It is intended to provide clarity and interpretation to support both decision makers and those who are subject to or affected by decisions and procedures set out within this framework. In doing so it is intended to support consistent decision making across every police force and all who are serving in England and Wales.

WHO THE GUIDANCE APPLIES TO AND HOW IT SHOULD BE USED

1.16 This guidance is issued to local policing bodies, chief officers of police (Chief Constables and Commissioner ranks), all members of police forces, civilian police employees and the Director General of the IOPC in respect of the discharge of their disciplinary functions. This means any function in relation to the conduct, efficiency and effectiveness of any person serving with the police, including in relation to the maintenance of discipline and disciplinary proceedings.

1.17 The guidance should be understood and applied by decision makers as a practical guide to assist with the application of the Regulations by those who are responsible for investigations, key determinations and the bringing of disciplinary proceedings, including those who are exercising the decision-making powers of the appropriate authority. In so far as is relevant, this guidance also applies to the Director General and the staff acting on their behalf in these matters.

1.18 The guidance should be understood and followed by every police officer in England and Wales as it sets out the standards and expectations for police officers, alongside the Code of Ethics and the associated Regulations. It also sets out the processes and procedures for officers who are subject or witnesses within investigations, disciplinary proceedings or performance procedures. It provides guidance in respect of how to raise concerns, challenge improper behaviour or make a protected disclosure and how this would be handled.

1.19 The guidance also applies to Legally Qualified Chairs and other panel members or persons responsible for the conducting and chairing of procedures set out in Part 4 and Part 5 of the Conduct Regulations in setting out their responsibilities and duties in conducting those proceedings and ensuring they are fair, transparent and efficient.

1.20 The guidance should be understood by those who represent police officers or staff, including those acting as a police friend or providing legal representation within a staff association or trade union representative role. It should be followed for the purposes of investigations or proceedings, in respect of such roles in assisting and representing officers and staff.

1.21 The guidance should be understood and applied by line managers and supervisors in order to understand how allegations or complaints against those who they are responsible for should be handled and treated. It also provides specific guidance to be followed where officers are being subject to formal or informal performance or attendance procedures, as well as where Practice Requiring Improvement is identified and an individual officer participates in the Reflective Practice Review Process.

1.22 Appropriate authorities for chief officers (mainly Police and Crime Commissioners) should note mandatory requirements under the Complaints Regulations for complaints against chief officers and Deputy Commissioner of the Metropolis to be referred to the IOPC, in cases where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would result in the bringing of criminal or disciplinary proceedings. In addition, all conduct matters involving chief officers and DSIs where the chief officer is the relevant officer must be referred to the IOPC. The IOPC's statutory guidance includes a separate Annex giving guidance on the handling of such cases.

1.23 This guidance applies to civilian employees within police forces and designated policing volunteers in so far as they are *persons serving with the police* according to the provisions of the 2002 Act, including Schedule 3 to that Act and the provisions of the Complaints Regulations. It also applies to those civilian employees who have a role under the Conduct Regulations or Performance Regulations i.e. as a police friend or line manager.

1.24 Disciplinary and performance proceedings apply only to police officers, with relevant equivalent procedures for police staff and volunteers determined by local policies and contracts on a force by force basis.

1.25 Every person to whom this guidance is issued must have regard to it and in doing so must take the provisions into account fully when discharging their functions or when subject to matters covered by this guidance. Where the guidance is relevant to a case, it must only be departed from when there is good reason to do so which can be clearly justified.

CONSULTATION

1.26 This guidance has been prepared by the Home Office and issued by the Home Secretary following input and consultation with the Police Advisory Board for England and Wales (PABEW) Discipline Sub-Committee.

1.27 Input has been provided by the National Police Chiefs Council Complaints and Misconduct Lead (Chief Constable Craig Guildford), the Police Federation of England and Wales (PFEW), Police Superintendents Association (PSA), the Chief Police Officers Staff Association (CPOSA), Association of Police and Crime Commissioners (APCC), Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), College of Policing, Independent Office for Police Conduct (IOPC), the National Association for Legally-Qualified Chairs (NALQC)and subject matter experts and practitioners from across the Professional Standards portfolio.

STRUCTURE, USE AND INTEREPRETATION

1.28 This version of the Home Office guidance is set out in discrete sections and chapters and is intended to provide comprehensive guidance and support for making decisions and following processes set out in these individual sections.

1.29 These sections can be read standalone for these specific parts of the relevant process and decision making alongside the relevant legal provisions, with reference to other parts of the process where needed.

1.30 It is intended to be a practical guide that can be easily followed and as a go-to reference source to aid decisions on a case-by-case basis for appropriate authority decision makers, investigators, those responsible for bringing and conducting disciplinary proceedings, line managers and individual officers and staff.

SECTION 1 INTRODUCTION

CHAPTER 2: STANDARDS OF PROFESSIONAL BEHAVIOUR

SYNOPSIS AND OVERVIEW
THIS CHAPTER RELATES TO

The Standards of Professional Behaviour for police officers, the Code of Ethics and how they should be applied.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Introduction
- The Standards of Professional Behaviour and the Code of Ethics
- Applying the Standards
- Misconduct action for bringing discredit on the police force
- Deciding whether a police officer has neglected their duties
- Off Duty Conduct
- Duty of Cooperation
- The Standards of Professional Behaviour:
    - Honesty and Integrity
    - Authority Respect and Courtesy
    - Equality and Diversity
    - Use of Force
    - Orders and Instructions
    - Duties and Responsibilities
    - Confidentiality
    - Fitness for Duty
    - Discreditable Conduct
    - Challenging and Reporting Improper Conduct

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers
- Legally Qualified Chairs
- Police Friend representing an officer in misconduct proceedings
- Appropriate authorities
- Professional Standards Departments
- Police HR Departments
- Legal Representatives for appropriate authorities or officer concerned
- IOPC staff

INTRODUCTION

2.1 This chapter introduces the Standards of Professional Behaviour for police officers. It sets out the intention behind the standards, expectations of behaviour and the College of Policing's Code of Ethics which underpin the standards. Application of the standards is discussed and should be read in conjunction with chapters in this guidance on misconduct proceedings and the legal framework when considering whether an officer's conduct justifies disciplinary proceedings. It sets out the expectations of off-duty conduct for police officers and where actions might bring discredit to the police service. Finally, the chapter provides more information on the standard of 'Duties and Responsibilities' which includes a duty to cooperate as a witness in investigations and inquiries.

THE STANDARDS OF PROFESSIONAL BEHAVIOUR AND THE CODE OF ETHICS

2.2 The Standards of Professional Behaviour are set out in Schedule 2 to the Conduct Regulations. The Standards of Professional Behaviour reflect relevant principles enshrined in the European Convention on Human Rights and the Council of Europe Code of Police Ethics.

2.3 The Standards of Professional Behaviour 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.

2.4 The Code of Ethics, issued by the College of Policing as a code of practice under section 39A of the Police Act 1996 (as amended), 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. 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.

2.5 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 and special constables, including any officer who is suspended in accordance with **Regulation 11** of the Conduct Regulations.

2.6 The Code of Ethics provides a broader framework that underpins the Standards of Professional Behaviour as set out in the Conduct Regulations. It sets out examples to help officers interpret the Standards of Professional Behaviour in a consistent way. They are not intended to be an exhaustive list. 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.

2.7 Misconduct, within the Conduct Regulations, is a breach of these Standards of Professional Behaviour that is so serious as to justify disciplinary action. An allegation against an officer which falls short of the expectations 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. Gathering and sharing organisational learning is key here in ensuring that application of the standards is done in a consistent and effective way.

APPLYING THE STANDARDS

2.8 In carrying out their duties in accordance with these standards, police officers have the right to receive the full support of their force. The ability of police officers to carry out their duties to the highest professional standards will depend on the provision of appropriate training, equipment and management support. 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 Code of Ethics and Authorised Professional Practice on the basis of the information provided.

2.9 Where these Standards of Professional Behaviour are being applied in any decision or misconduct meeting or hearing, they shall be applied in a reasonable, transparent, objective, proportionate and fair manner (see Chapter 4 on the legal framework and Chapters 10 and 11 on misconduct proceedings). The procedures are intended to encourage a culture of learning and development for individuals and the organisation. Disciplinary action has a part, when circumstances require this, but all outcomes should include learning opportunities. The misconduct procedures are designed to reflect best practice in other fields of employment while recognising that police officers have a special status as holders of the Office of Constable.

2.10 It is important that managers understand their responsibility to respond to, and deal promptly and effectively with, unsatisfactory behaviour and complaints about police conduct. It is a key responsibility of all managers to understand and apply the procedures set out in this guidance in a fair and timely manner, where appropriate. The police service will support any manager who has exercised their judgement reasonably and adhered to the guidance provided.

2.11 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. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether their actions or omissions were reasonable at the time of the conduct under scrutiny.

2.12 The formal sanction regime must be applied proportionately and serve the purpose of acting as a deterrent against future misconduct for both the officer concerned and for others serving in policing.

2.13 Within the 2020 Regulations, there is a clear distinction between any breach of the Standards of Professional Behaviour and a breach that is so serious as to justify disciplinary action. This is an important distinction and must be borne in mind at every stage of handling by the appropriate authority, investigators and case to answer decision-makers to ensure the correct regime is applied and consistent decision making applying the correct threshold is evidenced.

2.14 It should be remembered that the unsatisfactory performance procedures exist to deal with unsatisfactory performance, attendance and issues of capability, while the Reflective Practice Review Process deals with matters which meet the definition of Practice Requiring Improvement.

MISCONDUCT ACTION FOR BRINGING DISCREDIT ON THE POLICE FORCE

2.15 Discredit can be brought on the police by an act itself or because public confidence in the police is undermined, or is perceived to be 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 or cautioned for a criminal offence, that alone may lead to discipline or vetting action irrespective of the nature of the conduct itself. In all cases it must be clearly articulated how the conduct, conviction or caution discredits the police.

DECIDING WHETHER A POLICE OFFICER HAS NEGLECTED THEIR DUTIES

2.16 When deciding if a police officer has neglected their 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.

OFF-DUTY CONDUCT

2.17 Police officers have some restrictions on their private life. Some of these restrictions are set out in the Police Regulations 2003. These restrictions have to be balanced against the right to privacy in common law and right to a private life, as set out in Article 8 of the Human Rights Act 1998. 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.

2.18 As a result of the nature of the office of constable, a police officer is always subject to the Standards of Professional Behaviour even when off-duty. As such police officers should not behave in a manner that discredits the police service or undermines public confidence at any time. Police officers must be 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). In determining whether a police officer's off-duty conduct discredits the police, the test is not whether the police officer discredits themselves but the police as a whole.

2.19 Particular care must be taken when considering the private online behaviour of a police officer, even where they are not immediately identifiable as such. Consideration of off-duty online activity should take into account the officer's right to privacy and to free speech. However, the ultimate test is whether that online activity, notwithstanding that it is done in a private capacity, breaches the Standards of Professional Behaviour and brings discredit to the police as a whole.

2.20 It is important to recognise that any content or messages that are shared with colleagues via social media, email, text message or encrypted messaging services (even in an off-duty or private capacity) are nevertheless shared with workplace colleagues. Due care should, therefore, be taken as any material is potentially reportable. Where shared with other officers or staff, whether an individual is actually off-duty at the time that such a message is sent may not be relevant – individuals should apply the test as to whether the comments, content or material would be considered appropriate in the workplace and in line with the Code of Ethics and Standards of Professional Behaviour before sending or sharing any material in this way.

2.21 When police officers produce their warrant card 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.

2.22 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 should not conduct such interests or occupations if approval has been refused or withdrawn, nor should they breach any condition of approval imposed.

2.23 All forms of disciplinary action and formal outcomes for misconduct are available in response to off-duty conduct which breaches the Standards of Professional Behaviour.

DUTY OF COOPERATION

2.24 The duty to cooperate forms part of the Standards of Professional Behaviour under 'Duties and Responsibilities'. It reinforces the responsibility that a police officer has to cooperate fully where they are a witness in an investigation, inquiry or other formal proceedings. The responsibility is to participate openly and professionally as a witness in a variety of circumstances including where the officer is a witness in an investigation into other officers' misconduct, be that an investigation by the Independent Office for Police Conduct (IOPC) or by the force itself.

2.25 A clear caveat must be placed on the duty that it applies specifically to where the officer's status is that of witness and does not apply in the same manner where the status of the officer is that of subject to investigation and where the right to remain silent must be upheld.

THE STANDARDS OF PROFESSIONAL BEHAVIOUR

2.26 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 provides greater detail about the expectations underlying each of these standards.

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

Authority, Respect and Courtesy
"Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

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

Equality and Diversity
"Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly."

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

Orders and Instructions
"Police officers only give and carry out lawful orders and instructions.

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

Duties and Responsibilities
"Police officers are diligent in the exercise of their duties and responsibilities.

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and

professionally in line with the expectations of a police officer when identified as a witness."

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

Fitness for Duty
"Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities."

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

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

Challenging and Reporting Improper Conduct
"Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour."

SECTION 1: INTRODUCTION

CHAPTER 3: MAKING ALLEGATIONS AND ACTING AS A WHISTLE-BLOWER

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The responsibilities of all police officers and other individuals serving with the police in respect of challenging improper conduct. It explains how an allegation or concern should be raised internally via force reporting routes and how reports can be made directly to the Independent Office for Police Conduct (IOPC). It sets out the circumstances where an allegation or concern could amount to a protected disclosure, how allegations made by whistle-blowers should be handled and the implications of being a whistle-blower for the officer raising the concerns.

IT INCLUDES GUIDANCE ABOUT

- Challenging and reporting improper conduct
- Acting as a whistle-blower: definition of a protected disclosure
- False allegations made by whistle-blowers
- Immunity
- Providing evidence and attending hearings in public
- Reprisals against whistle-blowers

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Every police officer and person serving with the police
- A person wishing to raise a concern or challenge improper conduct
- A person who has made or is thinking about making a protected disclosure
- Appropriate authority decision makers or other professional standards practitioners who handle internal allegations and concerns

CHALLENGING AND REPORTING IMPROPER CONDUCT

Challenging and Reporting Improper Conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

Schedule 2 to the Police (Conduct) Regulations: Standards of Professional Behaviour

3.1 All persons serving with the police are under a duty to report any improper conduct and to not remain silent if they witness or become aware of an area of concern about the behaviour or actions of another person serving in policing. Taking action in these circumstances is an important part of the responsibilities of a professional in policing and is critical in upholding public trust and confidence. This duty extends to both reporting the improper conduct of colleagues as well as organisational impropriety, where it is found.

3.2 Police officers are under a specific duty as set out in the Standards of Professional Behaviour contained within the Conduct Regulations to challenge and report improper conduct. This responsibility is set out and applied in the Code of Ethics and as such applies to all persons who serve in policing, irrespective of their role or status.

3.3 Every police force has internal guidance and procedures for raising concerns or challenging improper conduct through line management channels and chains of command, force-based reporting routes (both open and confidential reporting lines) or directly with Professional Standards Departments. Normally any allegations or matters to be raised should be done so through these internal routes within force.

3.4 When an allegation suggests that a person serving with the police has acted in a manner that would justify the bringing of disciplinary proceedings or could amount to the commission of a criminal offence, the appropriate authority is under a duty to take action to assess and potentially investigate the allegation which could lead to proceedings being brought against an individual against whom the allegation has been made.

3.5 In some circumstances it will be necessary and appropriate for the matter to be investigated. In other circumstances it may be appropriate to treat the matter as a grievance to be handled in accordance with Chapter 6 of this guidance and local force procedure. This will depend entirely on the circumstances of the individual case and the nature of what has been alleged.

3.6 In addition to internal reporting routes, reports can be made directly to the Independent Office for Police Conduct (IOPC) via the Report Line, if for reasons related to the matters being raised, the individual feels uncomfortable or unable to do so internally.

INDEPENDENT OFFICE FOR POLICE CONDUCT (IOPC) REPORTING ROUTE

reportline@policeconduct.gov.uk

08458 770 061 (open 0900 – 1700 with voicemail facility after hours)

ACTING AS A WHISTLE-BLOWER: DEFINITION OF A PROTECTED DISCLOSURE

3.7 It is essential that individuals are confident that reporting wrongdoing will be a positive experience and not result in detrimental treatment by their force or colleagues. **Regulation 2(5) and (6)** of the Conduct Regulations makes it clear that the making of a protected disclosure and therefore acting as a whistle-blower by a police officer is not a breach of the Standards of Professional Behaviour.

3.8 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.

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

3.10 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,
b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject,
c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

d) that the health or safety of any individual has been, is being or is likely to be endangered,
e) that the environment has been, is being or is likely to be damaged,
f) 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.

3.11 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.

3.12 Where an officer makes a qualifying disclosure to their own police force, no further criteria needs to be met for a qualifying disclosure to be considered a protected disclosure.

3.13 An officer may also make a qualifying disclosure (in accordance with a procedure authorised by the force or otherwise) to a prescribed person, which in respect of conduct of those serving in the police is the IOPC. See section 43F of the Employment Rights Act 1996 and the Public Interest Disclosure (Prescribed Persons) Order 2014 (as amended).

3.14 The disclosing officer must reasonably believe that the subject matter of the disclosure properly falls within the remit of the prescribed person as defined by the Secretary of State (and it may be the case that a default falls within the remit of several prescribed persons). Furthermore, for the qualifying disclosure to be considered a protected disclosure, the officer must reasonably believe (suspicion is not enough) that the information they give and any allegation they make are substantially true.

3.15 A qualifying disclosure made by a police officer to someone else or in other circumstances, including a disclosure to the media, will be protected if the following tests are met (section 43G of the Employment Rights Act 1996):
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 and
d) in all the circumstances of the case, it is reasonable for the officer to make the disclosure.

3.16 If the disclosure relates to a matter of an exceptionally serious nature, the test under (c) does not have to be met - see section 43H of the Employment Rights Act 1996.

3.17 Reporting externally in this manner to the media or other bodies external to policing, however, should only occur in exceptional circumstances as a last resort. Police forces and the IOPC 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.

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

3.19 The duty of confidentiality set out under the Standards of Professional Behaviour does not prevent an officer making a protected disclosure to others, 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.

3.20 As set out above media disclosure made for personal gain, financial or otherwise, is never protected and may constitute an offence of police corruption.

FALSE ALLEGATIONS MADE BY WHISTLE-BLOWERS

3.21 Making a deliberately false allegation against another officer or member of staff is dishonest and could amount to a breach of the Standards of Professional Behaviour and in some circumstances could amount to perverting the course of justice. A protected disclosure must, in the reasonable belief of the whistle-blower, tend to show one of the circumstances within paragraph 3.10. Deliberately false allegations will never be protected disclosures and may be assessed as amounting to gross misconduct.

3.22 Whilst a protected disclosure must, in the reasonable belief of the worker, be made 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 above.

IMMUNITY

3.23 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 whistle-blower's behaviour, for example if they were involved in the misconduct they reported or any other misconduct or if their behaviour can properly be treated as separable from the making of the disclosure.

3.24 It is a matter for the force and (where appropriate) a panel to consider whether an officer's actions in coming forward with information should be taken in mitigation for any involvement the officer has had in the reported misconduct and consideration should be given to the relevance of any whistle-blowing status the officer may have.

3.25 The Regulations do not confer immunity for any failure by the whistle-blower to challenge or report the 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.

PROVIDING EVIDENCE AND ATTENDING HEARINGS IN PUBLIC

3.26 Officers and staff who report misconduct may subsequently be required to give evidence at misconduct proceedings, some of which are 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 – see **Regulation 39** of the Conduct Regulations.

3.27 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.

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

REPRISALS AGAINST WHISTLE-BLOWERS

3.29 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. Furthermore, any action taken by an officer to try and improperly prevent a person making a protected disclosure (whether by threats or acts) will also be considered a breach of the Standards of Professional Behaviour and a Recordable Conduct Matter.

3.30 A reprisal against a whistle-blower 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.

3.31 This should not prohibit allegations being made against whistle-blowers 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 severity assessment ‘case to answer’ decision, and at any subsequent disciplinary proceedings, once all the evidence is available.

3.32 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.

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

SECTION 1: INTRODUCTION

CHAPTER 4: LEGAL FRAMEWORK AND FORMS OF INVESTIGATIONS AND PROCEEDINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

An overview of the legal framework for the handling of complaints and conduct matters, including the forms of investigations and the proceedings that must be followed in different circumstances. The Chapter also provides some guidance in relation to moving between different types of process/procedure (e.g. between disciplinary and performance procedures) and the application of the legal framework in respect of officers on probation (student police officers) and officers on secondment under Section 97 of the Police Act 1996. The Chapter includes guidance about decision making and the powers exercised by the appropriate authority, including levels of delegation.

IT INCLUDES GUIDANCE ABOUT

- Which form of investigation and proceedings should be used?
- Timeframe: Which legal framework applies?
- Should a matter be handled/subject to investigation under Schedule 3 or the Conduct Regulations?
- Complaints
- Conduct matters and Recordable Conduct Matters
- Deaths and serious injuries (DSI or DSI matters)
- Identifying the correct form of subsequent proceedings
- Disciplinary proceedings
- Reflective Practice Review Process
- Unsatisfactory Performance Procedures (UPP)
- Decision making and schemes of delegation
- Who the legal framework applies to
- Officers on probation
- Seconded police officers - under Section 97 of the Police Act 1996

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authority decision makers
- Investigators and individuals involved in decisions post-investigation
- Officers subject to investigation
- Officers on probation
- Seconded police officers
- Police Friends and representatives

WHICH FORM OF INVESTIGATION AND PROCEEDINGS SHOULD BE USED?

4.1 This section of guidance seeks to set out some basic principles about how different matters (namely conduct matters, complaints and Death or Serious Injury (DSI) Matters) should be handled, including when investigations are required and what legal regime should apply. The section also provides detail on the role and purpose of different forms of investigations and proceedings and when different procedures should be used. It is provided as a guide for navigating the complex legal framework based on how a matter has been raised and the nature of the issues under consideration.

4.2 It is important to recognise that matters that are brought to the attention of the appropriate authority, whether by complaint, DSIs or by internal conduct allegation, will cover a range of circumstances, the majority of which will not result in formal

proceedings against any individual and often will not be serious enough to warrant formal investigation.

4.3 The focus must be to seek to resolve matters at the earliest opportunity in a manner that is reasonable and proportionate, with an emphasis on learning wherever possible. There will, however, be complaints, DSIs and conduct matters that require a formal investigation and may result in disciplinary or unsatisfactory performance procedures. This chapter explains how such matters should be handled by outlining the legal framework that applies in these circumstances.

4.4 The procedures to follow, including, where required or appropriate, formal investigation or subsequent proceedings, will vary on a case by case basis. This will depend on the seriousness of what is alleged and how a matter came to light - whether by route of a complaint, DSI or a conduct matter coming to light by internal allegation or other means. It is important that investigations and proceedings take note of the circumstances and context of any incidents or allegations of wrongdoing.

4.5 The legal framework that applies is set out in the 2002 Act, the Complaints Regulations, the Conduct Regulations and the Performance Regulations. In some cases, it will also be necessary to refer to the Special Constables Regulations 1965 and the Police Regulations 2003. This guidance seeks to provide clear signposting on the correct framework to apply depending on the circumstances, including where an investigation is necessary.

TIMEFRAME: WHICH LEGAL FRAMEWORK APPLIES?

4.6 For the purposes of triggering the legal framework, determining what framework should apply, including whether the 2012 or the 2020 Regulations should be followed to enter the police complaints, conduct and performance systems, what matters is when the complaint, allegation or matter **comes to the attention of the appropriate authority.**

4.7 When conduct/behaviour is alleged to have taken place is irrelevant for these purposes. For example, if an officer is alleged to have committed misconduct on 1 January 2020 but the matter comes to the attention of the appropriate authority on 1 July 2020, the 2020 regime will apply (and not the 2012 regime which was in effect at the time the conduct is alleged to have taken place).

SHOULD A MATTER BE HANDLED / SUBJECT TO INVESTIGATION UNDER SCHEDULE 3 OR THE CONDUCT REGULATIONS?

4.8 A common source of confusion in respect of the handling of matters and conducting investigations is which investigatory regime should be applied in different cases. Whilst the processes are (deliberately) very similar, there are important distinctions between the different regimes and it is essential to identify the correct procedure from the outset and operate accordingly throughout, including in relation to the issuing of Regulation notices (notices of investigation / outcome of severity assessment etc).

QUICK REFERENCE GUIDE	
Type of Matter	**Handling / Investigatory Regime**
DSI Complaint Recordable Conduct Matter (including all conduct matters relating to Chief Officers)	Police Reform Act 2002 and Police Complaints and Misconduct Regulations
Conduct Matter (that does not fall within the definition of Para 10, 11 or 13A of Schedule 3 plus Regulation 7 of the Complaints and Misconduct Regulations)	Police Conduct Regulations

COMPLAINTS

KEY CONCEPT	DEFINITION	REFERENCE IN LEGISLATION	RELEVANT LEGISLATION FOR HANDLING
COMPLAINT	*Any expression of dissatisfaction with a police force which is expressed by or on behalf of a member of the public.* *A complaint may be made about any matter which has adversely affected the person making a complaint. The dissatisfaction may relate to the conduct of a person serving with the police, or it could concern dissatisfaction with a police force's policies, strategic decisions, or relate to a customer-service matter. For complaints about conduct, a person may be treated as a complainant if they are the person in relation to whom the conduct took place, if they were otherwise adversely affected by the conduct or if they witnessed the conduct about which the dissatisfaction is expressed.* *A complaint about conduct cannot be made by a person serving with the police unless they were not on duty and the complaint relates to the conduct of a person who is under the direction and control of another chief officer.*	**Section 12 of the 2002 Act, amended by the Policing and Crime Act 2017**	**Part 2 and Schedule 3 to the 2002 Act** **(supplemented by the Complaints and Misconduct Regulations)**

4.9 Where a complaint comes to the attention of the appropriate authority having been made by a member of the public, the appropriate authority must take the steps

outlined in Schedule 3 to the 2002 Act, amended by the Policing and Crime Act 2017.

4.10 Detailed guidance on the handling of a complaint is set out in statutory guidance issued by the Independent Office for Police Conduct (IOPC). Schedule 3 (together with IOPC statutory guidance) sets out when a complaint must be recorded formally under the 2002 Act and when a complaint must be subject to investigation.

4.11 It is important to note that whenever a complaint is subject to investigation, the correct legal framework to follow is the 2002 Act, including Schedule 3 and the Complaints Regulations made under that Act. A complaint can never be investigated in accordance with Part 3 of the Conduct Regulations. See the IOPC statutory guidance for further detail.

4.12 Where a complaint is recorded and an investigation is not required by the legislation (and is not otherwise undertaken by the appropriate authority), the appropriate authority must handle the complaint in any other such reasonable and proportionate manner as it determines. This can include taking no further action, where no further action is a reasonable and proportionate response. Organisational learning should be a key consideration, whether there is no further action or not.

4.13 Where a complaint has been formally recorded and handled in accordance with Schedule 3, the complainant will have a right to apply for a review of the outcome of the complaint and the review body will determine whether the outcome was reasonable and proportionate.

Key Steps in Handling a Complaint	Legislative Provision
When to record a complaint	Paragraph 2 and paragraph 4A of Schedule 3 and further circumstances as set out in IOPC guidance
When a complaint must be referred to the IOPC	Paragraph 4 of Schedule 3 & Regulation 4 of the Complaints Regulations
When a complaint must be investigated	Paragraph 5, paragraph 6 (2A) and (2C) of Schedule 3 & Regulation 5 and 6 of the Complaints Regulations
More detailed steps and guidance is set out in the statutory guidance maintained and published by the Independent Office for Police Conduct.	

CONDUCT MATTERS AND RECORDABLE CONDUCT MATTERS

KEY CONCEPT	DEFINITION	REFERENCE IN LEGISLATION	RELEVANT LEGISLATION FOR HANDLING
CONDUCT MATTER	An allegation or case (but not the subject matter of a complaint) where there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have— 5.1 committed a criminal offence or	**Section 12 of the 2002 Act**	**Conduct Regulations**

	5.2 behaved in a manner which would justify the bringing of disciplinary proceedings		
RECORDABLE CONDUCT MATTER	A conduct matter (set out above) that falls within the definition for the purposes of Paragraph 10,11 and 13A of Schedule 3 to the 2002 Act and further described in Regulation 7 of the Complaints Regulations. Paragraph 13 sets out the requirements for referring Recordable Conduct Matters to the IOPC. The matters that must be referred are set out in paragraph 13 and Regulation 7 of the Complaints Regulations.	**Paragraph 11 of Schedule 3 to the 2002 Act and further described in Regulation 7 of the Complaints Regulations**	**Schedule 3 to the 2002 Act** **(supplemented by the Complaints Regulations)**

4.14 A conduct matter refers to any matter that comes to the attention of the appropriate authority otherwise than by complaint (usually via internal reporting routes or intelligence gathering), for example by way of an allegation made by another officer or evidence that comes to the attention of the appropriate authority that indicates an officer may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings. As set out in **paragraph 10** of Schedule 3 to the 2002 Act**,** conduct matters can also arise during the course of civil proceedings.

4.15 The threshold for meeting the definition of a conduct matter is low. There need only be an indication that the person serving with the police may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings. However, not all conduct that comes to the attention of the appropriate authority will meet this threshold. For example, an indication that there has been a breach of the Standards of Professional Behaviour is not necessarily sufficient to meet the definition of a conduct matter, if disciplinary proceedings would not be justified. If the appropriate authority considers that there is no indication that the behaviour of the person in question may amount to a criminal offence or warrant disciplinary proceedings, the conduct can be dealt with outside of the formal conduct regime.

4.16 All conduct matters or allegations must be referred to the appropriate authority for handling.

4.17 For conduct matters, a conduct allegation should be investigated in accordance with Part 3 of the Conduct Regulations unless the conduct matter is deemed to be a Recordable Conduct Matter in accordance with **paragraph 10,11(2) or 13A** of Schedule 3 to the 2002 Act and **paragraph 13** and **Regulation 7** of the Complaints Regulations. The descriptions of Recordable Conduct Matters are set out in **paragraphs 10 & 11** of Schedule 3 and **Regulation 7(1)** of the Complaints Regulations and any such matter must be recorded. Not all conduct matters are Recordable Conduct Matters.

4.18 In this context references to “Recording” and “Recordable” have a distinct legal meaning in relation to being handled in accordance with the 2002 Act, including Schedule 3 and the Complaints Regulations made under that Act. which is distinct from any decision to administratively record or log within force databases or systems. Recordable Conduct Matters must be handled in accordance with

Schedule 3 and the Complaints Regulations throughout the investigation. **Paragraph 13** of Schedule 3 to the 2002 Act and the Complaints Regulations specify what Recordable Conduct Matters must be referred to the Director General of the IOPC (See **Regulation 7(3)** for Recordable Conduct Matters that must be referred).

4.19 Information about the identification and handling of Recordable Conduct Matters is set out in IOPC statutory guidance.

4.20 Where a conduct matter relates to the conduct of a chief constable or the Commissioner/Deputy Commissioner of the Metropolitan Police, it must be treated as a Recordable Conduct Matter (**paragraph 11** of Schedule 3 to the 2002 Act and **Regulation 7(1)** of the Complaints Regulations). Any such matter must be referred to the IOPC (**paragraph 13** of Schedule 3 to the 2002 Act and **Regulation 7(3)** of the Complaints Regulations).

4.21 A conduct matter (that is not a Recordable Conduct Matter) should be handled in accordance with the Conduct Regulations, starting with a severity assessment, as set out in **Regulation 14** of the Conduct Regulations. Further guidance about the severity assessment and subsequent steps including investigation are set out in Chapter 7.

DEATHS AND SERIOUS INJURIES (DSI OR DSI MATTERS)

KEY CONCEPT	DEFINITION	REFERENCE IN LEGISLATION	RELEVANT LEGISLATION FOR HANDLING
DEATH OR SERIOUS INJURY	Any circumstances (not the subject of a complaint or which amount to a conduct matter) where a person has died or has sustained serious injury where at the time of the death or serious injury the person: (a) had been arrested by a person serving with the police or (b) was otherwise detained in the custody of a person serving with the police or (c) at or before the time of the death or serious injury the person had contact, whether direct or indirect, with a person serving with the police who was acting in the execution of their duties and there is an indication that the contact may have caused (whether directly or indirectly) or contributed to the death or serious injury.	**Section 12 of the 2002 Act**	**Schedule 3 to the 2002 Act** **(supplemented by the Complaints Regulations)**

4.22 All Death or Serious Injury (DSI) matters are handled in accordance with Schedule 3 to the 2002 Act. Any such matter that comes to light must be recorded by the appropriate authority in accordance with **paragraph 14A** of Schedule 3 and must be referred to the IOPC (in accordance with **paragraph 14C** and **Regulation 9** of the Complaints Regulations). **Paragraph 14CA** provides for the Director General

to treat a DSI matter that comes to the Director General's attention (otherwise than by having been referred under **paragraph 14C**) as having been so referred.

4.23 Further guidance in respect of the handling and investigation of DSI matters is set out in the IOPC statutory guidance.

IDENTIFYING THE CORRECT FORM OF SUBSEQUENT PROCEEDINGS

4.24 This section provides support for making decisions related to the framework of proceedings that should be applied and the principles of the disciplinary, performance and Reflective Practice Review Process regimes.

4.25 Further guidance is available when making specific decisions or determinations, including the case to answer decision elsewhere in this guidance. It is important however to have the principles set out below in mind from the outset in order to inform decision making from the early stages in respect of the handling of conduct matters and complaints.

QUICK REFERENCE GUIDE

Bringing Proceedings	
Type of Referral	**Proceedings to Follow**
Unsatisfactory performance or attendance Gross Incompetence	Police Performance Regulations
Practice Requiring Improvement	Part 6 of the Police Conduct Regulations
Misconduct or Gross Misconduct as a matter that would justify the bringing of disciplinary proceedings	Part 4 of the Police Conduct Regulations
Matter where the special conditions are satisfied	Part 5 of the Police Conduct Regulations (Accelerated Misconduct Hearing)

Key Points of Note Within 2020 System

- New proportionate approach to lower level mistakes, short-comings and under-performance – dealt with via the Reflective Practice Review Process which emphasises 'putting things right' through clear actions and constructive outcomes
- Increased focus on reflection, learning and development – not blame, punishment and sanction
- Formal disciplinary system focused on allegations of serious wrong doing (Revised definition of Misconduct or Gross Misconduct in the Conduct Regulations)
- Unless there is an indication that misconduct or gross misconduct may have been committed that would justify disciplinary proceedings, matters should be dealt with appropriately as not requiring any further action, informal action through ordinary line management or by referral to the unsatisfactory performance procedure or the Reflective Practice Review Process
- Improved flexibility on handling matters as performance issues and referral points between the misconduct / investigatory regime and performance procedures

DISCIPLINARY PROCEEDINGS

4.26 There are three over-arching purposes for police disciplinary proceedings:

- To maintain public confidence in, and the reputation of, the police service,
- To uphold high standards in policing and deter misconduct,
- To protect the public.

4.27 Undertaking disciplinary proceedings against individual officers seeks to achieve these goals by establishing the facts underlying the allegation and coming to a fair and just conclusion, with regard to all the evidence.

4.28 Under the 2020 regime, disciplinary proceedings are focused on serious allegations that justify a formal disciplinary outcome, at a minimum a written warning, to address issues where increased formal accountability is needed. Following a formal investigation (under the Conduct Regulations or Schedule 3 to the 2002 Act) where there is evidence of serious breaches of the Standards of Professional Behaviour, these will continue to justify the bringing of disciplinary proceedings.

4.29 Any subsequent disciplinary proceedings (irrespective of the investigation framework that has been applied) will be brought in accordance with Part 4 or Part 5 of the Conduct Regulations in the form of a misconduct meeting, misconduct hearing or accelerated misconduct hearing where there is a case to answer for misconduct or gross misconduct and a referral to disciplinary proceedings is justified.

4.30 Matters that may justify the bringing of disciplinary proceedings **must be investigated** in order to determine whether or not there is a case to answer and where there is a case to answer, whether the matter should be referred to disciplinary proceedings.

a) for complaints, this requirement is set out at **paragraph 5 and 6** of Schedule 3 to the 2002 Act and **Regulation 5** of the Complaints Regulations (where there is an indication that a person serving with the police may have behaved in a manner that would justify disciplinary proceedings or committed a criminal offence or there may have been the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998))
b) for conduct matters, this is set out in **Regulation 14** of the Conduct Regulations (where the conduct, if proved, would amount to misconduct or gross misconduct),
c) for complaints, recordable conduct matters and DSI matters that are referred to the Director General, the Director General will determine whether it is necessary for the complaint or matter to be investigated (**Paragraphs 5(1), 14(1) and 14D(1)** of Schedule 3).

4.31 If the matter (if proved) would not justify at least a written warning, it is not appropriate for the matter to be referred to disciplinary proceedings.

4.32 Disciplinary proceedings should not be used for matters of unsatisfactory performance, unsatisfactory attendance or gross incompetence.

	Type of Allegation	Definition *(as defined by the Conduct Regulations)*	How to be dealt with
Definitions for the purposes of bringing Disciplinary Proceedings	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal	Formal investigation Misconduct Hearing IOPC/Professional Standards Department
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[1]	Formal Investigation Misconduct Meeting IOPC/Professional Standards Department

Purpose of proceedings

4.33 Disciplinary proceedings should only be used when there is a case to answer for a breach of the Standards of Professional Behaviour that (if proven) justifies at least a written warning and as such constitutes what can be considered misconduct. See Chapter 8 on the case to answer decision. That position is distinct from dealing with less serious breaches or low-level conduct issues that can be addressed by line managers and supervisors, for example as Practice Requiring Improvement through the Reflective Practice Review Process.

4.34 As such, disciplinary proceedings are intended to deal with serious breaches of this nature that would damage public confidence in policing and have the potential to bring the reputation of the police force concerned or the service as a whole into disrepute such that a formal sanction would be appropriate if the allegation or matter were found proven.

4.35 In this context, a written warning should be seen as a significant sanction and one that necessarily has an impact on the professional record of a police officer and should, as such, be taken seriously as a meaningful sanction following a finding that misconduct has been proven. This sanction may be used in cases where it is found that there has been a breach of the Standards of Professional Behaviour, that is so serious as to justify disciplinary action. An officer subject to this sanction would have fallen below the standards, expectations and behaviours that are required of all police officers, irrespective of rank or role.

4.36 Written warnings should be used for those cases where learning alone would not be sufficient given the gravity or seriousness of the matter which therefore warrants a formal sanction. The alleged conduct must be sufficiently serious that it is not appropriate for the matter to be handled through the Reflective Practice Review Process or through another performance or management process.

4.37 The formal sanction regime must be applied proportionately and serve the purpose of acting as a deterrent against future misconduct for both the officer concerned and for others serving in policing.

4.38 Within the 2020 Conduct Regulations, there is a clear distinction between any breach of the Standards of Professional Behaviour and a breach that is so serious as to justify disciplinary action, for officers and special constables. This is an

[1] Disciplinary action means at least a written warning or above

important distinction and must be borne in mind at every stage of handling by the appropriate authority, investigators and case to answer decision maker to ensure the correct regime is applied and consistent decision making applying the correct threshold is evidenced.

4.39 Under the Conduct Regulations, the previous 2012 regime, as in most other disciplinary conduct regimes, contained a broad definition of misconduct where the actions of an officer had to be a breach of the Standards of Professional Behaviour in order to warrant misconduct proceedings. However, that threshold was unclear and not applied uniformly as, on its face, the regime allowed for and provided that any breach of the Standards of Professional Behaviour could constitute misconduct and therefore lead to a misconduct meeting or hearing, with sanctions including management advice.

4.40 In this 2020 regime, investigations and disciplinary proceedings should only be initiated where the matter is so serious as to justify a written warning or above. The threshold has thus been made explicit and a new reflective practice approach has been created to address behaviour that falls short of the expectations of the public and the Code of Ethics.

4.41 It is important to note that the threshold for what would justify bringing disciplinary proceedings is the same under a) the Conduct Regulations and b) the 2002 Act and Complaints Regulations. However, the process leading to the determination as to whether disciplinary proceedings should be brought is slightly different under the two regimes. This is due to the different definitions of “misconduct” in a) the Conduct Regulations and b) the 2002 Act and Complaints Regulations.

4.42 In the Conduct Regulations, the definition of misconduct has been changed to mean “a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action” i.e. justifying at least a written warning. Therefore, under the Conduct Regulations the thresholds for misconduct and for bringing disciplinary/misconduct proceedings are aligned. In the 2002 Act and the Complaints Regulations, misconduct continues to be defined as “a breach of the Standards of Professional Behaviour” (**paragraph 29** of Schedule 3 to the 2002 Act) - a lower threshold. Therefore the processes set out in a) **paragraph 23(5A)** of Schedule 3 to the 2002 Act, and **Regulation 27** of the Complaints Regulations (where there has been an IOPC independent or directed investigation) and b) **paragraph 24(6)** of Schedule 3 and **Regulation 23(2)** of the Conduct Regulations (where there has been a local investigation) are slightly different to the process under the Conduct Regulations even though they lead to the same end-point i.e. a determination as to whether there has been a breach of the Standards of Professional Behaviour that is so serious as to justify bringing disciplinary proceedings.

4.43 Under the 2002 Act and Complaints Regulations the process might be described as a two-step process. First the appropriate authority or IOPC needs to determine whether there is a case to answer for misconduct as defined in **paragraph 29** of Schedule 3 (lower threshold) and, if so, the second step of determining whether there is a case to answer for misconduct as defined in the Conduct Regulations.

REFLECTIVE PRACTICE REVIEW PROCESS

4.44 Practice Requiring Improvement means: underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations

of the public and the police service as set out in the Code of Ethics. This can include matters that allege the Standards of Professional Behaviour have been breached but that the alleged breach would not justify disciplinary proceedings or warrant referral to the Performance Regulations. Such matters are dealt with using the Reflective Practice Review Process, set out in Part 6 of the Conduct Regulations.

4.45 Within this new framework, low level breaches will be suitable for resolution outside of disciplinary proceedings, through the Reflective Practice Review Process, and only serious breaches should be referred to disciplinary proceedings.

Type of Allegation		Definition	How to be dealt with
Would Not Justify Disciplinary Proceedings	Practice Requiring Improvement	underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics	**Reflective Practice Review Process:** Engagement and participation Fact-Finding Discussion Development Report Handled locally by supervisors/ line managers

Purpose of Practice Requiring Improvement and the Reflective Practice Review Process

4.46 The handling of Practice Requiring Improvement matters and the Reflective Practice Review Process (see Part 6 of the Conduct Regulations) is intended to deal with behaviours, mistakes and performance that falls short of the expectations of the police service in a way that is constructive and proportionate.

4.47 The principal focus of the process will be to learn and to develop by improving from mistakes, errors and low-level wrongdoing. It is intended to address such matters which often demonstrate a combination of behavioural, conduct and performance issues which are below the expected standards but do not justify formal performance or disciplinary proceedings.

4.48 Traditionally, in part due to the previously broad definition of misconduct within the Conduct Regulations, a significant proportion of such issues have been referred to the formal disciplinary system. The Reflective Practice Review Process allows issues badged as Practice Requiring Improvement, that are potentially a blend of performance and conduct issues, to be handled proportionately with a clear focus on seeking to learn, improve and develop as a professional.

4.49 This new framework is designed to be reflective, providing the opportunity to openly consider mistakes that have been made, lessons that can be learned and specific interventions to deliver improvements.

4.50 The process is intended to focus on delivering learning and improvement opportunities to individual officers, line managers, leaders and the organisation. As

an early intervention and improvement opportunity, it is designed to prevent future instances of similar behaviour.

4.51 The process should be both (i) retrospective – what did not go as well as it could have gone (identifying lessons learned) and (ii) constructive – what can be done to move forward to improve, do better and prevent similar occurrences in the future (putting actions and interventions in place).

4.52 Where appropriate, the process should be restorative, to provide opportunities to improve relationships with colleagues and with members of the public or complainants.

When should the process be used?

4.53 The Reflective Practice Review Process for Practice Requiring Improvement should be used for underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service, as set out in the Code of Ethics and there is an opportunity for an officer to learn from an incident to improve their actions or behaviours.

4.54 The process should be used to address low level breaches and infringements of the Code of Ethics– i.e. wrongdoing, actions or behaviours which contravene those standards but are not serious enough to justify disciplinary proceedings.

4.55 A referral can be made to deal with a matter through the Reflective Practice Review Process at various stages in the handling of a matter, investigation or disciplinary proceedings, depending on the circumstances and what evidence is available. If a matter is referred without a formal investigation, this will be in circumstances where the appropriate authority has assessed that the conduct, if proved, would not amount to misconduct or gross misconduct and is suitable for referral to the Reflective Practice Review Process.

4.56 Where there is a decision following an investigation that there is no case to answer and disciplinary proceedings are not justified, there may be a decision to take no further action or to refer into the Reflective Practice Review Process.

4.57 A referral can also be made at the conclusion of disciplinary proceedings where the person conducting proceedings is satisfied there is no case to answer.

4.58 Where the issue in question is predominantly a performance issue, the appropriate authority, in consultation with the line manager, must be satisfied that the matter does not amount to unsatisfactory performance or other circumstances where the formal unsatisfactory performance procedures under the Performance Regulations should be used.

UNSATISFACTORY PERFORMANCE PROCEDURES (UPP)

Purpose of proceedings

4.59 Unsatisfactory performance means an inability or failure of a police officer to perform the duties of the role or rank they are currently undertaking to a satisfactory standard or level.

4.60 It is important to remember that informal action to combat unsatisfactory performance should be taken by the force in the first instance, see paragraph 14.8. Where informal intervention does not improve performance, the Unsatisfactory

Performance Procedures (UPP) as set out in the Performance Regulations may be used.

4.61 The purpose of UPP is to provide a clear framework for handling issues of unsatisfactory performance. UPP provides the officer concerned with the opportunity to improve with a formal staged process for demonstrating an improvement in performance.

4.62 If performance remains at a level that is not satisfactory, the formal process can commence and continue with formal meetings to consider the officer's performance and how it should be improved. If performance remains unsatisfactory it can ultimately result in dismissal at a third stage meeting.

4.63 Ordinarily a referral to the first stage of UPP will likely be where there has been a consistent period or pattern of performance that has not met expectations or the required standards of the role expected of an officer, rather than single instances or "one-off" issues.

4.64 UPP also provides a framework for exceptional circumstances where the appropriate authority considers the performance (not attendance) of the officer to be so unsatisfactory as to warrant the procedures being initiated at the third stage, see **Regulation 32** of the Performance Regulations. 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.

When should UPP proceedings be used?

4.65 The Performance Regulations do not apply to senior officers and therefore cannot apply to officers above the rank of Chief Superintendent, nor do they apply to officers on probation – see **Regulation 2** of the Performance Regulations.

4.66 There is no single formula for determining the point at which a concern about a police officer's performance should lead to formal procedures being taken under the Performance Regulations.

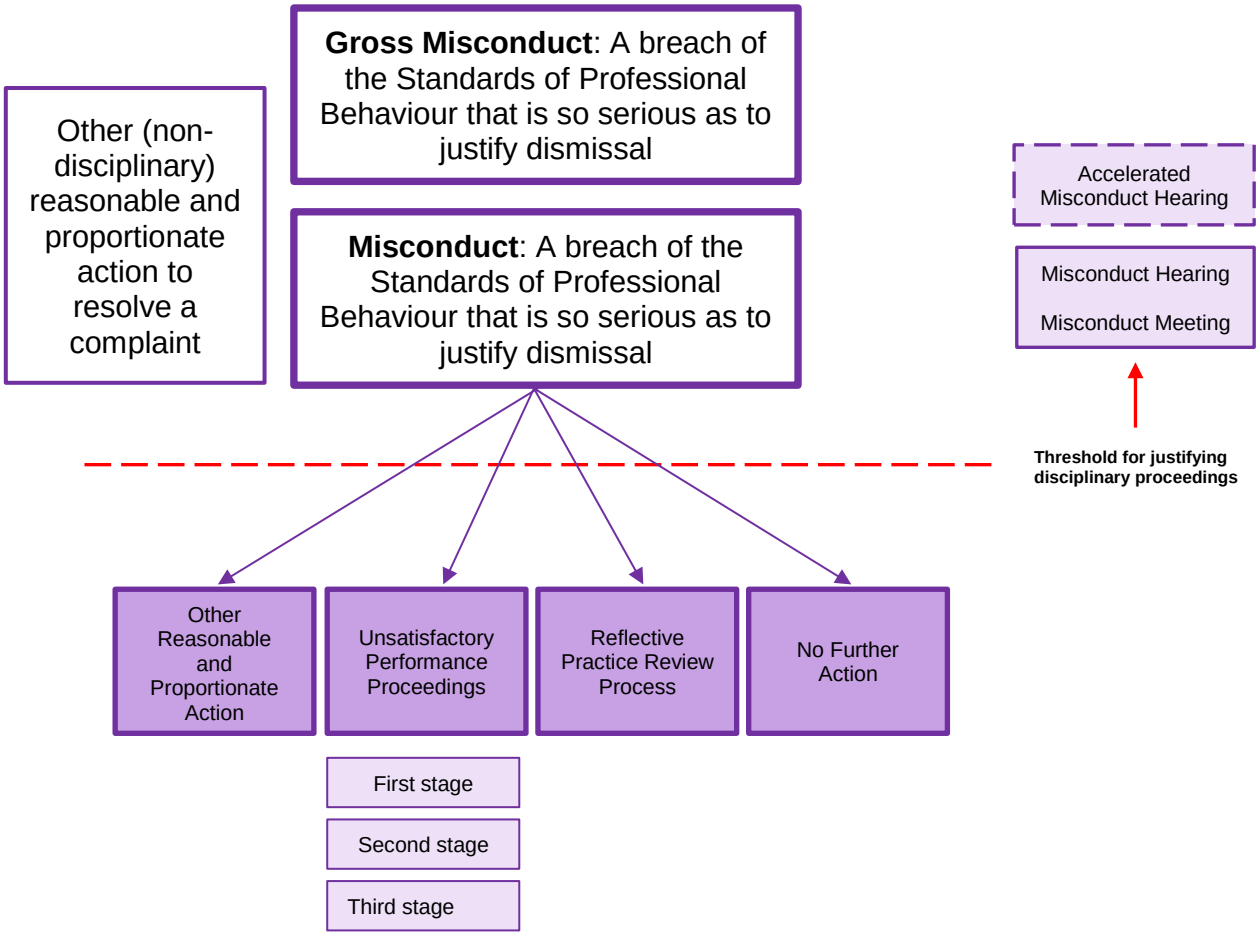
4.67 Each case must be considered on its merits and there is no restriction on referring appropriate cases straight to a first stage meeting where the manager considers it appropriate to do so. However, the following points need to be emphasised:

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/or via the Reflective Practice Review Process, where appropriate,
c) managers should be able to demonstrate that they have considered whether management interventions are appropriate before using the UPP.

4.68 If there is a reoccurrence of a performance related issue following the completion of the Reflective Practice Review Process, this could lead to the matter being escalated to the formal UPP procedures following an assessment by the appropriate authority. This would mirror such an escalation to a formal misconduct investigation should there be a future repeat of potential misconduct such that disciplinary proceedings could be justified.

4.69 Depending on the circumstances of the particular case, matters can be referred into the formal performance procedures either at the first stage, second stage or third stage. Third stage referrals are reserved for matters that amount to gross incompetence and second stage referrals can be used in certain prescribed circumstances where it is demonstrated that the officer concerned had previously been given the opportunity to improve but failed to do so.

4.70 Gross incompetence means a serious inability or serious failure of a police officer to perform the duties of the rank or the role they are currently undertaking to a satisfactory standard or level, without taking into account the officer's attendance, to the extent that dismissal would be justified. This will ordinarily be in circumstances of a single incident or event.



DECISION MAKING AND SCHEMES OF DELEGATION

4.71 The appropriate authority refers to the decision-making role and powers of the chief officer of police in relation a person serving with the police and in relation to any complaint, conduct or DSI matter. In most cases this will be the chief officer or acting chief officer for the police force (i.e. the Chief Constable or the Commissioner of the Metropolitan Police).

4.72 Where a matter relates to a Chief Constable or Commissioner, the appropriate authority is the local policing body. In most cases this will be the Police and Crime Commissioner (PCC) for an area or where there is a directly elected mayor who has had these functions devolved, the office of the mayor. In the City of London, the local policing body is the Common Council, for the Metropolitan Police, this function is conducted by the Mayor's Office for Policing and Crime (MOPAC) and

in Greater Manchester, this function is conducted by Mayor of the Greater Manchester Combined Authority.

4.73 Where the appropriate authority is the decision-maker, these powers can be delegated to allow the powers to be exercised on a day-to-day basis by appointed persons for individual cases and investigations. All Professional Standards Departments should have schemes of delegation to set out how appropriate authority decision making can be delegated.

Police Reform Act 2002 and Complaints Regulations

4.74 In accordance with **Regulation 46** of the Complaints Regulations, the power and duties of the chief officer as the appropriate authority can be delegated to an officer (or member of police staff with at least a similar amount of seniority) of at least the rank of Inspector. In the case of a complaint or conduct matter that relates to a senior officer (an officer holding a rank above that of Chief Superintendent), these powers can only be delegated to a senior officer (or police staff equivalent). The appropriate authority must be satisfied that any such delegation could not reasonably give rise to a concern about the impartiality of any such individual so delegated. It is essential that, where decision-making is delegated, the decision-makers have a suitable level of experience and training.

4.75 Where a complaint handled in accordance with Part 2 of the 2002 Act, is being handled otherwise than in accordance with Schedule 3, or in a reasonable and proportionate manner other than investigation, the powers or duties can be delegated to any person serving with the police, except where the delegation could reasonably give rise to a concern as to whether the person could act impartially.

4.76 In accordance with the governance arrangements set out in the 2002 Act, the Director General can delegate any duty to a person or persons acting on their behalf who is employed by the IOPC. See **paragraph 6A** of Schedule 2 to the 2002 Act.

Police Conduct Regulations

4.77 In accordance with **Regulation 2** of the Conduct Regulations, where the appropriate authority is the chief officer, decision making can be delegated to an officer (or member of police staff of at least a similar level of seniority) of at least the rank of Inspector. It is essential that, where decision-making is delegated, the decision-makers have a suitable level of experience and training.

4.78 The following decisions or functions must be authorised by a senior officer:

- **Regulation 11** (Suspension)
- **Regulation 49** (Referral of case to accelerated misconduct hearing)

Police Performance Regulations

4.79 In accordance with **Regulation 4** of the Performance Regulations, the appropriate authority can delegate decision making to an officer (or member of police staff of at least a similar level of seniority) of at least the rank of Inspector.

4.80 Where a decision is taken under the delegated functions of the appropriate authority in respect of **Regulation 32** (Circumstances in which a third stage meeting may be required without a prior first or second stage meeting), this must be authorised by a senior officer.

WHO THE LEGAL FRAMEWORK APPLIES TO

4.81 This paragraph sets out in brief how the different legal processes and Regulations apply to different categories of persons serving with the police.

LEGAL FRAMEWORK	Applies to
Police Reform Act 2002 Police Complaints and Misconduct Regulations	All persons serving with the police: • Police officers (including former officers) • Civilian Police Staff • Designated policing volunteers
Police Conduct Regulations	• Police officers only (including former officers)
Police Performance Regulations	• Police officers only up to the rank of Chief Superintendent. • Excludes police officers on probation
Police Appeal Tribunal Rules	• Police officers (including former officers) only
• Disciplinary proceedings and performance processes for members of police staff and designated policing volunteers are set out in local police force polices and contracts. Individuals holding such roles are not captured by the Conduct or Performance Regulations. • Police officers on probation (student police officers) are not subject to the Performance Regulations but are subject to Regulation 13 of the Police Regulations 2003 (Discharge of a Probationary Officer).	

OFFICERS ON PROBATION

4.82 The terms of probationary service are set out in **Regulation 12** of the Police Regulations 2003 and associated determinations. This regulation (and associated determination) sets out that any new police officer appointed to the rank of constable (other than where transferring from another police force, having completed the required probationary period) is subject to a probationary period of two years.

4.83 Periods of probation also apply to individuals who leave the police service and subsequently decide to re-join the same or another force, for example after a period working in another sector or industry. In these circumstances there will be a further period of probation when the person re-joins policing, as set out in Regulations.

4.84 The provisions of probationary service also apply to direct entrant superintendents and inspectors for a period of 18 months and 24 months respectively. In either case this can be subject to extension by the chief officer.

4.85 Probationary officers are not subject to the procedures for dealing with unsatisfactory performance, since there are separately established procedures for dealing with the performance of probationary officers.

4.86 **Regulation 13** of the Police Regulations 2003 provides that an officer on probation may be dispensed with at any time during the probationary period if the chief officer considers that they are not fitted, physically or mentally, to perform the duties of the office, or that the probationer is not likely to become an efficient or well conducted constable, inspector or superintendent (depending on the circumstances of the probationary officer in question).

4.87 Probationary officers are subject to the procedures concerning investigations and disciplinary proceedings. The chief officer has discretion whether to use the disciplinary 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.

4.88 Particular consideration should be given to allegations of gross misconduct which ordinarily should be subject to disciplinary proceedings rather than the **Regulation 13** route.

4.89 However, where allegations of misconduct (rather than gross misconduct) are made, the chief officer may instead consider whether the circumstances of the matter merit consideration under **Regulation 13** rather than under misconduct procedures. 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.

4.90 Whilst an officer who had passed probation may have been subject to a misconduct meeting in such circumstances and would unlikely face dismissal (unless they are facing multiple counts or had existing warnings in force) the chief officer may determine that a potential breach amounting to misconduct during a probationary period would demonstrate that the officer is not fitted to become an efficient or well conducted constable, inspector or superintendent.

4.91 It is important to bear in mind the principles of public interest, particularly where public confidence and matters involving members of the public are involved, that due process is followed, including the transparency of hearings being held in public and the rights of complainants and interested persons to attend proceedings under the Conduct Regulations.

4.92 If the **Regulation 13** procedure is used, the probationary 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 the discharge of the probationer, the officer will not be added to the police barred list and thus could be reappointed or reemployed in policing in future.

SECONDED POLICE OFFICERS - UNDER SECTION 97 OF THE POLICE ACT 1996

4.93 This part of the guidance sets out the procedures for dealing with matters of unsatisfactory performance or attendance and conduct allegations in respect of police officers who are seconded under the provisions of Section 97 of the Police Act 1996.

4.94 Those responsible for managing police officers on secondment are expected to uphold the principles contained within this guidance, to manage issues of unsatisfactory performance or attendance or low-level misconduct in a proportionate, fair and timely manner without returning an officer to their parent force. This can include the conducting of the Reflective Practice Review Process, as appropriate, by the relevant manager or supervisors in the seconded organisation, provided this is done in consultation with the appropriate authority of the parent force.

4.95 Formal procedures set out in the Conduct Regulations (other than Part 6) and Performance Regulations must be applied by the force from where the officer is seconded (i.e. the parent force) rather than the receiving organisation to which the officer is seconded. If it is necessary to institute formal disciplinary or performance/attendance procedures the officer should be returned to force.

4.96 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 they can be dealt with by the receiving organisation under their disciplinary arrangements. However, on return to the parent force, they may still be dealt with under the police disciplinary arrangements in respect of the same matters.

4.97 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 officer continues to have a Personal Development Record (or equivalent) and is made aware of these arrangements for dealing with issues of misconduct or unsatisfactory performance or attendance.

Unsatisfactory Performance Procedures for Seconded Officers

4.98 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 officers performing their duties and reinforces the aims of both the service and the receiving organisation.

4.99 Unlike the broad policing functions performed by police forces throughout England and Wales, the nature and range of the tasks carried out by 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 officers whose performance is giving rise to concern requires particular attention.

4.100 Where a pattern of performance by a seconded officer is giving rise to concern, the line manager should raise their concerns with the 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.

4.101 Where there is no or insufficient improvement in the performance or attendance of the officer, the seconded 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 receiving organisation (or their nominated representative).

4.102 The receiving organisation, in conjunction with the appropriate authority for the officer concerned, will decide whether it is appropriate that the officer should be returned to the parent force or whether the unsatisfactory performance or attendance can be addressed with the officer remaining on secondment.

4.103 Where an officer who has been returned to the 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 as to whether it is appropriate to use the UPP.

Formal Investigations and Disciplinary Procedures Seconded Officers

4.104 The public and colleagues with whom police officers work are entitled to expect the highest level of professional standards of officers. Those serving on secondment are expected to act in accordance with the Standards of Professional Behaviour.

4.105 Section 2 of this guidance sets out the principles for dealing with allegations of misconduct or gross misconduct. This allows for less serious matters to be dealt with in a proportionate and timely manner by means of the Reflective Practice Review Process or informal management intervention. That principle will also apply to officers who are seconded to other organisations with host line managers having the responsibility for dealing with these issues.

4.106 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 way of a Reflective Practice Review Process, then the seconded officer's manager is expected to deal with the matter in this way. The outcome of any process should be reported to the parent force.

4.107 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 IOPC.

4.108 Where the line manager considers that an alleged breach of the Standards of Professional Behaviour is more serious and indicates that the 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 receiving organisation (or their nominated representative) will liaise with the appropriate authority from the parent force to assess whether the officer should be returned to the force while a preliminary assessment into the matter is conducted by the parent force.

4.109 If, as a result of that preliminary assessment, the parent force, or the IOPC, considers it appropriate to issue a Regulation notice and to formally investigate an allegation of misconduct or gross misconduct in relation to the matter, then the officer must be returned to force.

4.110 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 receiving organisation, will decide if it is appropriate for the officer to be able to resume the secondment.

4.111 The arrangements set out in this guidance should be agreed to as part of the secondment agreements agreed 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 their consent to the exchange of information between the receiving organisation and the parent force.

SECTION 2: HANDLING AND INVESTIGATIONS

This section contains guidance about handling investigations into complaints and conduct matters including the support that is available to the officer concerned and the handling of grievances.	***Page number***
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SECTION 2 HANDLING AND INVESTIGATIONS

CHAPTER 5: THE OFFICER CONCERNED: SUSPENSION, REPRESENTATION AND WELFARE

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The officer concerned, their support when undergoing misconduct or performance procedures and whether the officer can be suspended, retire or resign. It also sets out the entitlement to a police friend and other representation during the course of an investigation, disciplinary proceedings or performance proceedings.

THIS CHAPTER INCLUDES GUIDANCE ABOUT:

- When an officer is under investigation for alleged misconduct
- Role of a Police Friend
- Legal representation
- Suspension and restriction of duties
- Resignations and retirements during the course of investigations and proceedings
- An officer's fitness for misconduct proceedings
- Police staff subject to disciplinary proceedings
- General welfare
- Duty of care
- Guidance on post-incident procedures, management, welfare and legal issues
- Other forms of external support

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers involved in misconduct proceedings,
- Legally Qualified Chairs,
- Police Friend representing an officer in misconduct proceedings,
- Appropriate authorities,
- Professional Standards Departments,
- Police HR Departments

WHEN AN OFFICER IS UNDER INVESTIGATION FOR ALLEGED MISCONDUCT

5.1 This chapter relates to the officer concerned in misconduct procedures and provides information on the support they can receive when subject to those proceedings and their rights in terms of the responsibilities and duty of care expected of the appropriate and investigating authorities. The chapter explains the circumstances and Regulations around suspension of an officer under investigation and whether an officer can be prevented from retiring or resigning. It signposts the welfare support available for an officer and where they can expect support when personal difficulties might be affecting their conduct in order to help prevent those difficulties becoming disciplinary matters.

5.2 Police officers fulfil a unique role in society in exercising the powers of the state to protect and serve the public in challenging circumstances. The public must have confidence that in the relatively small number of cases when police officers fall short of the highest standards of behaviour, those officers are accountable for their actions and that they will be subject to fair scrutiny. The public must be confident that the

procedures for investigating allegations of misconduct and the conduct of the hearing will be fair and transparent.

5.3 It is also critical that an officer involved in disciplinary procedures receives the support they need and that due process is given and maintained in accordance with principles of fairness and natural justice. The nature of investigations should be as open as possible, appropriate and conducted efficiently and expeditiously. Proceedings should be effective and transparent and be a balanced inquiry into an officer's conduct.

5.4 Whilst recognising that being subject to an investigation is a difficult experience and can have a significant impact on individuals involved, the process does not have to be adversarial: all those undertaking investigations and proceedings are professionals and both officers and the appropriate authority (or the Independent Office for Police Conduct (IOPC)) and their representatives should treat others with respect and professional courtesy. It will support this process where all parties communicate openly, with due professional courtesy and meet commitments to provide information when required and ensure the timeliness of the procedures.

5.5 Appropriate authorities should be aware of the complexities of an officer's identity becoming known and the risk that this may pose to them and their families. It is clear that justice should be conducted in an open way, but that this should be balanced against human rights in managing the most serious of matters.

5.6 When an officer is under investigation for alleged misconduct or is attending misconduct or performance proceedings, they can expect to be treated in a fair and transparent way. There are a number of provisions in the Regulations which ensure that the officer is clear on what the investigation is for, when they will be able to present their case and what will happen at the proceedings. The main provisions outlining the rights and notifications[2] to the officer and Regulations are summarised in the box below.

PROVISIONS ON RIGHTS AND NOTIFICATIONS	
Right or Notification	**Regulations**
Right to a police friend	Regulation 7 of the Conduct Regulations: Police friend Regulation 18 of the Complaints Regulations: Police friend Regulation 5 of the Performance Regulations: Police friend
Right to legal representation	Regulation 8 of the Conduct Regulations: Legal and other representation Regulation 6 of the Performance Regulations: Legal and other representation
Written notice of assessment of conduct, identity of investigator and terms of reference of the investigation and that could lead to misconduct proceedings	Regulation 17 of the Conduct Regulations: Written notices Regulation 17 of the Complaints Regulations: Notification of severity assessment
Right to give a statement, representations, documents to the investigator in support of their case	Regulation 18 of the Conduct Regulations: Representations to the investigator Regulation 20 of the Complaints Regulations: Special Procedure: representations to the person investigating

[2] Notifications and copies of reports and terms of investigation are subject to the Harm test.

Where an investigation not completed within relevant period notification of progress and steps to bring to conclusion	Regulation 19 of the Conduct Regulations: Timeliness of investigation Regulation 13 of the Complaints Regulations: Timeliness of Investigations
Notice of referral to misconduct proceedings, the conduct subject to proceedings, the name of the chair, the investigator's report, a copy of their statement	Regulation 30 of the Conduct Regulations: Notice of referral to misconduct proceedings
Right to respond to written notice and give their account and whether they accept that the conduct amounts to misconduct or gross misconduct	Regulation 31 of the Conduct Regulations: Procedure on receipt of notice
Notification of outcome and right of appeal against the outcome	Regulation 43 of the Conduct Regulations: Notification of outcome Regulation 45 of the Conduct Regulations: Appeal from a misconduct meeting

ROLE OF POLICE FRIEND

5.7 Police officers have the right to be accompanied and consult with a police friend at any interview during an investigation into misconduct and at all stages of the misconduct or performance proceedings. The police friend is there to support the officer when they are facing allegations of misconduct or poor performance. This role is integral to the proceedings and an important means of ensuring not only that the officer is supported during the process but also that correct procedures are followed.

5.8 A police friend can accompany a police officer at any investigatory interview at any of the stages of both the misconduct and performance proceedings. They can advise the police officer throughout the proceedings and can advise on how to gain legal representation and completion of relevant paperwork. They can make representations to the appropriate authority concerning any aspect of the proceedings under the Conduct Regulations, Complaints Regulations and Performance Regulations. Where both a lawyer and a police friend are present during misconduct or performance proceedings, the officer should be represented at those proceedings by their lawyer.

5.9 The 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 their 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 former member of a staff association, they 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 the former officer last served prior to leaving policing (see Section 6 on Former Officers).

5.10 A police friend cannot be appointed to act as such if they have had some involvement in that particular case. For example, if they are a witness within the investigation. A police friend should not be asked to provide an account of the matters under investigation or subject to proceedings, for example being cross-examined or called as a witness in relation to their role as police friend or the advice provided to the person they are representing.

5.11 Police officers are expected to act with honesty and integrity when undertaking their role as a police friend and continue to be subject to the Standards of

Professional Behaviour. This means, of course, that their conduct as police friend must also adhere to the standards. The police friend can:

a) advise the officer concerned throughout the proceedings under the Conduct Regulations, Complaints Regulations, and the Performance Regulations,
b) unless the officer concerned has the right to be legally represented and chooses to be so represented, represent the officer concerned at the misconduct proceedings, performance proceedings, appeal meeting, an accelerated misconduct hearing or at a Police Appeals Tribunal,
c) make representations to the appropriate authority concerning any aspect of the proceedings under the Conduct Regulations, Complaints Regulations or Performance Regulations and
d) accompany the officer concerned to any interview under the Complaints or Conduct Regulations, or meeting or hearing which forms part of any proceedings under the Conduct Regulations (apart from Part 6) or Performance Regulations.

5.12 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 officer's behalf. It is for the officer concerned to speak for themselves when asked questions.

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

5.14 At any stage of a case, up to and including a misconduct meeting or hearing or an unsatisfactory performance meeting, the officer concerned or their 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. This is subject to any timescales set out in the Conduct Regulations or the Performance Regulations. The officer or their police friend must clearly set out the reasons for thinking that there are insufficient grounds or incorrect procedures and submit any supporting evidence. It will be for the person responsible for the relevant stage of the case (for example the chair for a misconduct hearing) to consider any such submission and determine how best to respond to it, bearing in mind the need to ensure fairness to the officer concerned, when balanced against wider public interest, and whether the process has resulted in serious unfairness.

5.15 At a misconduct meeting, hearing or accelerated misconduct hearing under the Conduct Regulations or a meeting under the Performance Regulations where the police friend attends, they may, except where the officer concerned is legally represented:

a) put forward the police officer's case,
b) sum up that case,
c) respond on behalf of the police officer to any view expressed at the meeting,
d) make representations concerning any aspect of the proceedings,
e) confer with the police officer,
f) in a misconduct meeting or hearing, ask questions of any witness, subject to the discretion of the person(s) conducting that hearing.

LEGAL REPRESENTATION

5.16 A police officer is entitled to be legally represented at a misconduct hearing or accelerated misconduct hearing (in cases that fall to be dealt with under the Conduct Regulations) as set out in **Regulation 8** of the Conduct Regulations or a third stage performance meeting (for dealing with an issue of gross incompetence under the Performance Regulations) as set out in **Regulation 6** of the Performance Regulations (where the officer is required to attend a third stage meeting without a prior first or second stage meeting). Where they decide to be so represented, the police friend can also attend and may consult with the officer concerned but will not carry out functions a) to f) described above. Where the officer decides not to be legally represented, the police friend would continue to carry out the functions a) to f) described above.

5.17 It should be noted that the unavailability of one or more preferred lawyers (i.e. lawyers of the officer's choice) is not a valid ground for delaying misconduct proceedings, where alternative legal representation can be found.

5.18 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, they are entitled to have a police friend present. It is often the case that an interview for criminal purposes is also relied on subsequently for a parallel 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. Whilst there is no entitlement in law for additional representation for criminal matters, this approach avoids the need for repeated interviews and allows the police friend to support the officer fully informed of the allegations. It is not the role of the police friend to conduct their own investigation into the matter.

5.19 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.

SUSPENSION AND RESTRICTION OF DUTIES

5.20 An officer may be suspended while under investigation under the Conduct Regulations or under Schedule 3 to the 2002 Act. In either case, the suspension will be under **Regulation 11** of the Conduct Regulations. **Regulation 11** and the provisions related to suspension do not apply to former police officers. Suspension must not prejudge or prejudice the outcome of the investigation. The decision to suspend an officer will be the exception and has no bearing on any indication of guilt and should not be seen as such – suspension only occurs for the reasons set out below.

5.21 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 (a) the purposes of misconduct proceedings and (b) as a matter of employment law. They remain subject to the Standards of Professional Behaviour.

5.22 The decision to suspend a police officer will only be taken where a temporary move to a new location or role has been considered but is not appropriate in all the circumstances of the case and it appears to the appropriate authority that either:

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 officer should be suspended.

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

5.24 The police officer should be told why they are 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.

5.25 The officer or their police friend may make representations against the initial decision to suspend (before the end of 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. The appropriate authority must review the suspension conditions on receipt of these representations.

5.26 The use of suspension must be reviewed at least every 4 weeks, and sooner where facts have become known, whether by notification or otherwise, 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 and given a summary of the reasons why, within 3 working days beginning with the day after the review.

5.27 The officer concerned will remain suspended until it is decided that the officer should not be referred to a misconduct hearing or accelerated misconduct hearing, such proceedings have concluded or the appropriate authority decides that suspension is no longer appropriate.

5.28 Suspension of non-senior officers must be authorised by a senior officer although the decision can be communicated to the officer by an appropriate manager. The chief officer is responsible for the suspension of senior officers within their force and the local policing body is responsible for the suspension of the chief officer.

5.29 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 officer concerned as are reasonable in the circumstances -for example, restricting access to police premises or police social functions.

5.30 As set out in **Regulation 11** of the Conduct Regulations, 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 includes circumstances where an individual is in receipt of an allowance in respect of temporary promotion.

5.31 Where an officer has been temporarily promoted in rank and is the subject of a complaint or conduct matter (in any form by which those matters are handled, including investigation, those dealt with otherwise than by investigation and those dealt with under Reflective Practice Review Process), the officer should remain temporarily promoted and retain any relevant allowances where the circumstances are otherwise the same as they were before the matter came to the attention of the appropriate authority. Temporary promotion should not be rescinded solely on the basis that the officer is under investigation or subject to the Reflective Practice Review Process.

5.32 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 officer concerned within a year will still be subject to the rules governing the maximum number of days that may be carried over.

Consulting with the Director General where the investigation is under the 2002 Act

5.33 In cases where the Director General of the IOPC is independently investigating or leading a directed investigation into a matter (under **paragraph 18 or 19** of Schedule 3 to the 2002 Act) the appropriate authority must consult with the Director General 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 Director General before making the decision to allow an officer to resume their duties following suspension (unless the suspension ends because there will be no misconduct or accelerated misconduct proceedings or because these have concluded) in cases where the Director General is independently investigating or directing an investigation into a case involving that police officer.

5.34 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 review effectively the need for continuing the suspension.

RESIGNATIONS AND RETIREMENTS DURING THE COURSE OF INVESTIGATIONS AND PROCEEDINGS

5.35 Since 15th December 2017, police officers who are the subject of any allegation of misconduct or gross misconduct brought under the Conduct Regulations may give notice of intent to resign or retire.

5.36 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 Regulations by virtue of the former officer provisions. 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. This is explained in more detail in Section 6 on former officers.

5.37 Special constables are subject to separate Regulations (Special Constables Regulations 1965) that govern their retirement or resignation whilst suspended. By virtue of **Regulation 72** of the Conduct Regulations, **Regulation 3(1)** of the Special Constables Regulations has now been omitted. This means that a special constable

does not need consent from their chief constable to resign or retire while suspended under the Special Constables Regulations.

5.38 Since 15 December 2017, officers who resign or retire during the course of an investigation into an allegation of gross misconduct, or who leave and a relevant allegation later comes to the attention of the appropriate authority, 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 police advisory list. Forces have a duty to report to the College of Policing where an individual should no longer be included on the barred or advisory list, see further information in Section 7.

5.39 It is 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.

AN OFFICER'S FITNESS FOR MISCONDUCT PROCEEDINGS

5.40 Where an officer is medically unfit - and this refers 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 their 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.

5.41 The appropriate authority (or the Director General as the case may be) 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. It is recommended that the appropriate authority ensure that a suitable medical professional, with an appropriate level of experience, has assessed the submission. Where the officer has not provided evidence meeting this threshold, and the appropriate authority determines on the basis of any other evidence available to it that none of the conditions are met, the appropriate authority should continue with the misconduct proceedings.

5.42 It is important that there is a balance between the welfare of the 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. 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 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.

5.43 It should be remembered that the primary purposes of the disciplinary and complaints frameworks are to maintain public confidence in, and the reputation of, the police service, to uphold high standards in policing and deter misconduct, and to protect the public. Investigations into allegations of misconduct must be brought to a

conclusion so as to give effect to those purposes, whilst bearing in mind any representations made by the officer concerning their fitness so as to determine the fairest way in which to do so. Clear medical evidence will be required to justify delaying an investigation on the grounds of health or fitness.

POLICE STAFF SUBJECT TO DISCIPLINARY PROCEEDINGS

5.44 Although police staff are not subject to the Conduct Regulations, many of the practices outlined in this chapter are applicable to them when involved in disciplinary proceedings. Several police forces are now aligning their process and procedures as far as practicable. In particular, a police staff member involved in disciplinary procedures should receive the support they need and due process given and maintained. As with officers, the nature of investigations should be as open as possible, appropriate and conducted efficiently and swiftly. Proceedings should be effective and transparent and be a balanced inquiry into their conduct.

5.45 When a staff member is under investigation for alleged misconduct or is attending misconduct proceedings they can expect to be treated in a fair and transparent way and they and others should be treated with respect and professional courtesy.

5.46 As set out in **Regulation 23** of the Complaints Regulations, a member of police staff or designated volunteer is entitled to choose a police friend where they are under investigation under the Complaints Regulations. The police friend may be:

a) a member of a police force,
b) a special constable,
c) a police staff member,
d) a staff association or trade union representative, or,
e) any other person who is approved by the chief officer of the force in which they are serving.

5.47 As with officers, the police friend must not be otherwise involved in the matter. The police staff member's police friend may act on behalf of the person in the following capacity:

a) advise them throughout the proceedings,
b) provide statements or documents to the investigator,
c) accompany the person at interviews with the investigator,
d) make representations to the Director General.

GENERAL WELFARE

5.48 We recognise that the difficult, high risk role police officers and staff undertake can contribute to stress, health concerns and other problems that sometimes lead to them taking wrong decisions under pressure or behaving in ways that they would not in ordinary circumstances. Earlier support and access to services provided for welfare is therefore essential to try to avoid situations developing that might have been prevented by earlier interventions. The role will continue to be high risk but officers should know that support is available should they need it at any point.

5.49 In 2018 the Government launched a common goal for police wellbeing to be achieved by 2021:

Policing will ensure that every member of the police service feels confident that their welfare and wellbeing is actively supported by their police force throughout their career, that a culture supporting this is embedded in every force, and that individuals have access to appropriate support when they need it. This includes physical and mental health as well as the broader concept of wellbeing - which enables individuals to realise their potential, be resilient, and be able to make a productive contribution to the police workforce.

5.50 To help reach this goal, police forces should take the necessary steps:

a) Achieving an organisational culture which focuses on prevention, early intervention and support for individuals,
b) Embedding clear, consistent, evidence-based standards throughout policing in welfare and wellbeing support provided to police and staff,
c) Enabling early diagnosis when appropriate, as well as signposting to other services for specialist support including through occupational health and effective line management,
d) Signposting to relevant police charities and other providers who deliver treatment and support and
e) Effective sharing of innovation and best practice.

Duty of Care

5.51 It is the responsibility of Chief Constables to manage the welfare of officers and staff throughout their careers which includes during any investigation, performance concerns and misconduct proceedings. This is a duty of care and it remains the role of elected Police and Crime Commissioners to ensure they are held to account for this and other duties.

Roles of line manager, HR and Occupational Health in welfare support for officers

5.52 Systems should be in place in all police forces that can support officers who are under stress or may have problems that might potentially lead to performance or conduct matters. In particular, individuals who are subject to investigation or misconduct proceedings can often feel isolated and vulnerable which in turn can lead to them becoming disengaged from their organisation, social circle and their support networks. An individual with concerns regarding their welfare should be able to contact their line manager, HR, Occupational Health or a nominated welfare contact in force for support.

5.53 The line manager's role should be set out by all forces and that role should include support for the welfare of the officers they manage including:

a) monitoring workloads to ensure that people are not overloaded,
b) identifying learning and development opportunities as required on management practice and health and safety,
c) being vigilant and offering additional support to officers and members of staff who are experiencing stress,
d) assisting in monitoring the effectiveness of measures to support officers and staff.

5.54 Police force HR functions and staff should set out the ways in which they can provide continuing support to managers and individuals in the difficult environment they face and encourage referral to Occupational Health or Employee Assistance Providers where appropriate.

5.55 In Chapter 19 on attendance management procedures, we outline the role of occupational health who are responsible for providing advice on clinical issues affecting officers in the workplace, where this may be affecting performance or attendance.

Guidance on post-incident procedures, management, welfare and legal issues

5.56 The College of Policing provides authorised professional practice (APP) guidance on post-incident procedures, which outlines key procedures and responsibilities post deployment of armed policing that includes key guidance to support officers on management, welfare and legal issues.

5.57 The IOPC also provides guidance on the handling of post-incident procedures and how such circumstances should be conducted.

Other forms of external support

- Staff associations including the Police Federation (and UNISON for police staff)
- Other Employee Assistance Programmes provided in force or externally
- Any other service provider provision locally (including for example, police specific charities)
- GP services
- NHS services, including mental health services: - https://www.nhs.uk/NHSEngland/AboutNHSservices/mental-health-services-explained/Pages/accessing%20services.aspx
- Support for managers via Oscar Kilo: https://oscarkilo.org.uk/
- College of Policing guidance exists in relation to police in high risk roles and trauma management

SECTION 2: HANDLING AND INVESTIGATIONS

CHAPTER 6: HANDLING OF GRIEVANCES

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

How the legal framework of the 2002 Act and the relevant Regulations for the complaints and disciplinary systems applies and is relevant to internal grievances. Specifically, this guidance is intended to guide appropriate authority decision makers on how they should distinguish (recordable) conduct matters from concerns and issues raised internally that could be handled as a grievance. It also provides guidance and advice to those who wish to raise a concern or grievance. This chapter is not intended to replace force level policies and procedures for handling of formal grievances or dispute resolution but to assist in identifying the correct procedure and framework, along with principles for dealing with concerns and grievances that arise.

IT INCLUDES GUIDANCE ABOUT

- What is a grievance
- Ethos and principles for handling grievances
- Relationship between grievances, investigations and disciplinary proceedings
- Scoping and preliminary activity
- Submitting a grievance or concern
- Feedback and organisational learning

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authority decision makers
- Those involved in handling and dealing with grievances or concerns raised internally
- Line managers
- Individuals who have made or are thinking about making a grievance or raising a concern internally
- Individuals who are the subject of a grievance
- Those representing or advising individuals who wish to raise or are subject of a grievance

WHAT IS A GRIEVANCE

6.1 The Advisory, Conciliation and Arbitration Service (ACAS) defines a grievance as[3]:

> ***Grievances*** *are concerns, problems or complaints raised by a staff member with management. Anybody may at some time have problems or concerns with their working conditions or relationships with colleagues that they wish to raise.*

6.2 In policing a grievance can be raised by any person serving with the police, including police officers, members of civilian staff or volunteers.

[3] ACAS definition: http://www.acas.org.uk/index.aspx?articleid=1670

6.3 Concerns and issues that may cause grievances within policing can include:

- Bullying, harassment or victimisation
- Discrimination
- Feelings of unfair or unequal treatment
- Health and safety
- Work relations
- New working practices/organisational changes

This can include circumstances where a concern or issue is related to a protected characteristic under the Equality Act 2010.

6.4 This chapter provides guidance on how these types of issues should be handled and is intended to clarify the legal framework that applies, including when and how matters should be referred for consideration by the appropriate authority and when a formal investigation under either the 2002 Act or Conduct Regulations is required.

ETHOS AND PRINCIPLES FOR HANDLING GRIEVANCES

6.5 This guidance relates to circumstances where potential grievances are raised by an individual. Individual forces will have their own guidance and grievance procedures in place for the handling of such matters, which provide greater detail and information including additional steps, points of contact and timescales.

6.6 Grievance processes should focus on resolution at every stage and should be handled proportionately and ideally as locally as possible to where the individuals concerned are located. Wherever possible, matters should be resolved informally and by mutual agreement by all parties.

6.7 Processes should be open, fair and proportionate for all parties involved and handled with transparency, ensuring all parties are regularly updated on progress and actions taken. There will however be circumstances where it is not appropriate to provide all parties with full details related to the nature of the grievance or action taken.

6.8 Care should be taken to ensure that grievances are dealt with appropriately. Good grievance-handling will mean that those who are subject to multiple grievances relating to the same type of behaviour will be escalated as necessary. It should be noted that those dealing with grievance processes should be in a supervisory rank and have the necessary skills and experience to carry out this process.

6.9 Grievances should be treated confidentially by all parties with restrictions on information sharing clearly explained and respected and information that is not anonymised or is attributed to individuals should not be discussed or disseminated without a legitimate reason for doing so.

6.10 Whilst confidentiality is an important consideration, particularly at the outset of a concern being raised, if an individual is raising a concern or potential grievance, the person handling it should explain that some courses of action may mean an

individual cannot remain anonymous. Those who wish to raise a concern or grievance should consider what course of action, resolution or outcome they are hoping to achieve and whether this would be consistent with principles of anonymity and fairness for all parties.

6.11 Outcomes and learning should be acted upon meaningfully and promptly with feedback provided to all parties.

RELATIONSHIP BETWEEN GRIEVANCES, INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS

6.12 This guidance specifically focuses on the interaction between the regulated system for police officers and grievance procedures but, subject to local policies, the principles can also be adopted and applied to contractors, police staff and designated policing volunteers within forces. It is good practice for a consistent approach and guidance to be adopted as far as possible for every individual within the force.

6.13 Grievance procedures do not override or interfere with obligations in respect of matters which fall within the Regulations concerning police discipline and the handling of conduct matters in accordance with the Conduct Regulations, Complaints Regulations and the 2002 Act. See paragraph 4.14 and following paragraphs.

6.14 This chapter of guidance does not relate to allegations which are clear from the outset that they relate to misconduct or gross misconduct which should be made to the appropriate authority or Professional Standards Departments as is covered elsewhere in this guidance. Where a matter comes to light in the course of the grievance which should be dealt with via the formal discipline system, this should be covered by paragraph 6.17.

6.15 Before raising a grievance formally or informally, the individual who is considering such an approach should consider carefully what outcome they hope to achieve and how they would like the matter to be handled. Being clear about the issues that need to be resolved and what a satisfactory outcome might look like can help a grievance to be resolved quickly and identify the best route for resolution, including whether a formal grievance process needs to be followed or whether matters can be resolved locally and informally.

6.16 Potential outcomes could include:

Informal resolutions

- Mediation – either informal or formal
- Discussions with each of the individuals concerned
- Individual action plans
- Individual training activity
- No further action

Formal processes and procedures

- Formal apology
- Referral to a formal grievance process – which could include any combination of the resolutions above
- Formal investigation as a conduct matter

- Disciplinary proceedings (if there is a case to answer for misconduct or gross misconduct)
- Action undertaken in accordance with the Performance Regulations
- Practice Requiring Improvement / referral to the Reflective Practice Review Process

6.17 In some circumstances, it may not be clear at the outset that a matter is one that relates to a potential conduct matter (i.e. an allegation that could justify the bringing of disciplinary proceedings). There may also be circumstances where the person raising the concern is not aware of whether that is the case. It is important that matters are handled and referred appropriately if it is identified that the matter that has been raised as a grievance that would justify the bringing of disciplinary or criminal proceedings.

6.18 If at any stage a matter or evidence that has come to light during the course of an internal concern or grievance indicates that an individual may have behaved in a manner that would justify the bringing of disciplinary or criminal proceedings, the matter must be referred to the appropriate authority. Where there is no such indication a referral would not be necessary.

6.19 Nevertheless, there is an ongoing duty to keep a decision whether to refer to other processes under review and should evidence or circumstances change, consider whether a fresh decision to refer is needed.

6.20 Where a matter has previously been referred for consideration by the appropriate authority it may be determined by the appropriate authority or the Director General that the matter is best suited for resolution via the grievance procedure rather than disciplinary procedures and can be referred back for handling in accordance with this guidance and any local grievance procedures. This will be in circumstances where the appropriate authority has assessed that the matter does not justify the bringing of disciplinary proceedings or amount to misconduct or gross misconduct and therefore does not warrant a formal investigation under the Conduct Regulations or 2002 Act.

6.21 If a formal investigation under either the 2002 Act or Conduct Regulations has started and evidence later emerges that indicates the allegation would not result in a case to answer for misconduct or gross misconduct, how the matter is handled subsequently will depend on the legal framework that the matter is being investigated under. See Chapter 4 which deals with the legal frameworks for investigation.

6.22 Where a concern has been raised by a police officer or a person working within a force, the force should determine as soon as reasonably practicable and within 10 working days how the matter should be handled. This could involve identifying whether the matter should be resolved informally, referring to the appropriate authority (where paragraph 6.18 applies) or handling in accordance with force grievance procedures. Once such a determination has been made, this should be kept under review whilst the matter is being handled and where further evidence or information comes to light be referred for the correct form of handling.

6.23 Whilst it is in the interests of all parties for matters to be resolved as promptly as possible, the 10 working day time period above relates solely to the identification of

how a matter should be handled. Whilst many matters may be resolved within that timeframe others, including the more serious matters which are referred to formal processes, will likely take longer.

SCOPING AND PRELIMINARY ACTIVITY

6.24 During the 10 working day window, it may be appropriate for some limited scoping to take place to seek to establish facts and form a basis on which a determination can be made about the most appropriate way to handle the matter that has been raised. This assessment can be used to identify the most appropriate route for the matter to be handled, including whether a referral for a determination by the appropriate authority as to whether a conduct matter has been identified and if so whether a formal investigation into alleged misconduct or gross misconduct is required.

6.25 Because a grievance or a concern that has been raised could result in formal proceedings, including potentially investigation and disciplinary or criminal proceedings, great care must be taken in the early stages of handling including preliminary activity and scoping.

6.26 If an individual is under investigation for a matter that could lead to disciplinary or criminal proceedings, there are protections in place, including the right to representation, written notices and safeguards to ensure processes are fair to all parties. As such, care must be taken to make sure these protections are not undermined. This is why **as soon as** there is an indication that a matter could lead to disciplinary proceedings, it should be referred to the appropriate authority for a determination.

6.27 However, these protections need to be balanced against the principle of seeking to resolve concerns and grievances as early as possible, and making an informed decision about how a matter should be handled. This scoping can include initial enquiries including reviewing any evidence which is readily available. It should not involve detailed investigative activity or proactively seeking evidence at this stage.

Seeking further clarity from the person raising the concern

6.28 Seeking clarity from the aggrieved individual during initial scoping can help understand more about the nature of the concern or grievance that they are raising, how they would like the matter handled and inform decision making about whether an investigation is necessary.

This can include seeking to understand:

- What is the cause of the concern or grievance that has been raised?
- What was the impact on them? How did it make them feel?
- How does the individual wish to proceed and what are their views on how the matter should be handled? What does a positive resolution look like?

Where the concern or grievance alleges discriminatory behaviour:

- What was it that made them believe the area of concern involved actions or behaviour that was viewed as discriminatory?
- Do they feel that the individuals involved made assumptions about them because of protected characteristic(s)? What were these

assumptions? How did they impact on the actions of the individuals involved?

- Did they note any differences in the way they were treated compared with others who do not share their protected characteristic(s)?
- Was there anything about language used that added to their concern?
- Did anyone else witness the alleged actions and were any comments or reactions expressed to them at the time or since?
- See the Independent Office for Police Conduct (IOPC) guidance on handling allegations of discrimination for further information.

Seeking further information from others

6.29 Scoping should not involve detailed investigative activity. If there are grounds for referral to the appropriate authority for matters that could lead to disciplinary proceedings, such scoping activity should not be conducted and if at any stage during scoping it becomes apparent that a referral is necessary, scoping should be concluded and the appropriate referral made.

6.30 Individuals should be informed that they are not subject to a formal investigation at that time and nor should they be subjected to a formal interview. They should be made aware that if evidence does come to light that suggests that wrongdoing may have occurred, that matter could be referred to the appropriate authority in the future so that an assessment can be made about how best to handle the concerns and the most appropriate forum for doing so.

6.31 Any information sought from the subject(s) during initial scoping should go no further than necessary to assess whether the concern that has been raised involves any potential conduct matters. If, during any discussion with a subject, it becomes clear that the matter should be referred to the appropriate authority to formally determine whether there is a ‘conduct matter’, then the discussion should be brought to a close and no further information should be sought from the subject.

6.32 During this initial scoping it is not appropriate to seek a full detailed account from a person to whom the grievance relates. At this stage the aim is to establish which process should apply while also seeking to avoid undermining the procedural safeguards or fairness of any subsequent statutory proceedings that could follow. It will be appropriate to convey to the individual to whom the grievance relates the main substance of the matter so that they are able to provide a meaningful initial response to assist in assessing which process should apply.

6.33 This requires careful judgment based on the circumstances of the individual case as to how to achieve this such as, for example, attempting to break down the grievance into general heads or areas of complaint.

6.34 The status and purpose of any conversation with a person about whom a concern or grievance has been made should be made clear at every stage, with it being clear that the individual is not under investigation. If, subsequent to the conversation or initial scoping, the matter is referred for handling either as a formal grievance or as a conduct matter, the individual will have an opportunity to provide a full account.

6.35 If a formal investigation is initiated on the grounds that there is an indication that there is a matter that could lead to disciplinary proceedings which requires investigation, it will be necessary to conduct a formal interview, which should include any areas previously discussed informally. In the interests of fairness, a fresh account should be sought and any informal accounts provided pre-investigation should not ordinarily be relied upon for the purposes of disciplinary proceedings and associated evidence.

SUBMITTING A GRIEVANCE OR CONCERN

6.36 Prior to submitting a grievance or concern, the individual submitting should carefully consider the matter they wish to raise, how it is best to be handled and what resolution they are seeking.

6.37 An initial self-assessment is one way of achieving this to think about the facts of the concerns and matters being raised and why raising a grievance could provide a solution. Individuals should consider, wherever possible, whether to raise matters informally and locally before a formal grievance is submitted.

6.38 Individuals who are thinking about raising an initial concern or formal grievance may wish to seek advice from a police friend or relevant staff association.

6.39 When raising a concern or grievance care should be taken to clearly explain what has occurred and the specifics of the behaviour or context which mean that it is most appropriate for it to be treated as a grievance and what it is, for example about another person's behaviour or actions, that warrants consideration in this way.

6.40 These should be based in fact and clearly explain what has happened, the impact this has had, the resolution that is being sought and what actions and considerations locally have taken place prior to a grievance being raised.

FEEDBACK AND ORGANISATIONAL LEARNING

6.41 Learning organisations take every opportunity to learn, develop and improve for the benefit of the individuals who serve within the organisation and for the benefit of the organisation as a whole, in order to better serve the public. In many cases learning will not (and should not) be limited to the individuals involved but will also highlight matters that are relevant to the business area and wider organisation.

6.42 Forces should have mechanisms in place to identify lessons learned and use feedback in whatever form to consider whether there are further opportunities for improvement whether that arises through a grievance, feedback from an individual or member of the public, or is identified during misconduct proceedings or following an incident.

6.43 Organisational learning and the ability to continuously improve relies on strong leadership within police forces, as well as the structures in place to learn from individual cases and ongoing events or issues including those raised internally through the grievance procedures. Senior leaders must take responsibility to ensure that learning is identified and appropriate steps taken to address issues that have been uncovered to avoid concerns in the future and with a view to continuing to improve the police force.

6.44 It is important that whatever route a grievance or concern follows, there is an emphasis on learning, development and feedback for all who are involved as well as the wider organisation. This includes ensuring that all parties involved in any stage of this process understand how the matter has been resolved and any feedback arising from the consideration of the issues.

6.45 Such feedback should be focused on positive steps to resolve any issues that have come to light and capture the learning from the consideration. All grievances and concerns raised will have likely some learning that extends beyond any individuals' actions.

6.46 Grievances are not solely related to misconduct issues, even in circumstances where misconduct has been identified. It is therefore important that action is taken to address all aspects of a grievance and provide meaningful feedback to all parties not limited to disciplinary action taken, should it occur.

6.47 It is best practice to have identifiable force leads or Single Points of Contact (SPOCs) for responding to, disseminating and recording appropriate actions across the organisation following a grievance or concern.

SECTION 2: HANDLING AND INVESTIGATIONS

CHAPTER 7: INVESTIGATIONS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The process and procedure for investigations held under the Conduct Regulations or Complaints Regulations.

IT INCLUDES GUIDANCE ABOUT

- Purpose of the investigation
- Good practice in investigations
- Severity assessment
- Appointment of investigator
- Role of the investigator
- Special procedure in investigations
- Notification to the officer concerned
- Representations to the investigator
- Consideration of special conditions
- Timeliness of investigations
- Interviews during investigations
- Cases involving more than one allegation
- Conducting investigations and disciplinary proceedings where there are possible or outstanding criminal proceedings
- Disciplinary proceedings following criminal proceedings

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- An officer under investigation
- Police Friend representing an officer
- Investigators
- Line manager
- Appropriate authorities

PURPOSE OF THE INVESTIGATION

7.1 The purpose of a formal investigation into potential misconduct or gross misconduct is to:

a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct,

b) assist the appropriate authority (or the Director General of the Independent Office for Police Conduct (IOPC) as the case may be) to establish whether there is a case to answer in respect of misconduct, gross misconduct or no case to answer, based on the evidence and taking into account all of the circumstances, and,

c) identify any learning for the individual or the organisation as a whole.

GOOD PRACTICE IN INVESTIGATIONS

7.2 Investigations may be held under the Conduct Regulations or under Schedule 3 to the 2002 Act and the Complaints Regulations. The processes for investigation under these two regimes are broadly similar, with some differences. This chapter aims to cover off both sets of processes and signpost these differences. Reference must also be made to the IOPC statutory guidance for any matter that is investigated in accordance with Schedule 3.

7.3 Investigations must be carried out as efficiently and effectively as possible to ensure that the time taken is reasonable and proportionate, given the effect such an investigation will have on the officer concerned as well as any others affected. The expectation is that the vast majority of investigations will be completed within 6-12 months (or earlier wherever possible), unless the case is particularly complex or linked to criminal proceedings or any form of litigation, which would reasonably justify a delay in an investigation. Investigations that exceed 12 months will result in scrutiny of the investigation and require the investigator to explain the delay in writing. It should be kept in mind that overly lengthy investigations may lead to legal challenge. See paragraph 7.53 on the further measures in place where investigations take over 12 months.

7.4 Particular care should be taken to ensure that investigations into those who are subject to a Regulation notice and suspended or on limited duties are undertaken as efficiently as possible, given the impact on officers.

SEVERITY ASSESSMENT

7.5 For investigations under the Conduct Regulations, the appropriate authority must conduct a severity assessment to determine whether the conduct of the officer concerned, if proved, would amount to misconduct, gross misconduct or neither. This is set out in **Regulation 14** of the Conduct Regulations.

7.6 Where the appropriate authority considers that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it must assess whether:

a) the conduct, if proved, would amount to Practice Requiring Improvement,
b) the matter should be referred to be dealt with under the Performance Regulations, or,
c) there should be no further action.

7.7 Where the appropriate authority has determined that there is no misconduct or gross misconduct, they must inform the officer concerned in writing as soon as practicable that there will be no further action, or whether further action may be taken – i.e. referral of the matter to be dealt with under the Reflective Practice Review Process or referral to be dealt with under the Performance Regulations.

7.8 The severity assessment, where the outcome is that of Practice Requiring Improvement or referral to the Performance Regulations, must include consultation with the line manager of the officer concerned.

7.9 Where the appropriate authority considers that the conduct, if proved, would amount to misconduct, the matter must be investigated and the appropriate authority must assess the form (i.e. misconduct meeting or hearing) which disciplinary proceedings are likely to take. For example, where the officer concerned has a live final written warning and the matter amounts to misconduct only, this will mean that, should the

matter proceed to disciplinary proceedings, this must take the form of misconduct hearing – see **Regulation 23(10)** of the Conduct Regulations.

7.10 Where the appropriate authority considers that the conduct, if proved, would amount to gross misconduct, the matter must be investigated and, should the matter proceed to disciplinary proceedings, this must take the form of misconduct hearing – see **Regulation 23(10)** of the Conduct Regulations.

7.11 The appropriate authority may revise its severity assessment at any time prior to the start of disciplinary proceedings, where it appears that their initial assessment was incorrect or where new information has been found which affects the original assessment. Where the investigator believes that, taking account of fresh evidence, the appropriate authority is likely to consider that the matter no longer meets the threshold of misconduct or gross misconduct, the investigator must submit a report to the appropriate authority. This report should include, as per **Regulation 21(4)** of the Conduct Regulations:

a) a statement of the investigator's belief and the grounds for it,
b) a written report of the investigation up until that point, and,
c) a statement of the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations, (see Section 5), or the Reflective Practice Review Process (see Section 4).

7.12 Where the severity assessment has been revised, and the appropriate authority decides to take no further action or to refer the matter to be dealt with under the Reflective Practice Review Process or the Performance Regulations, in accordance with **Regulation 14(7)** of the Conduct Regulations, the appropriate authority must, as soon as practicable, notify the officer concerned in writing.

7.13 Where the severity assessment is revised in relation to a former officer and is no longer a case assessed as gross misconduct, the former officer should be removed from the police advisory list and any associated intelligence reviewed – see Section 6 on former officers.

7.14 Care should be taken in revising the severity assessment to ensure that there is no unfairness to the officer concerned. Where the appropriate authority does revise its severity assessment, it must, as soon as practicable, give the officer concerned written notice of the change as well as the reasons for this change, subject to the harm test as set out in **Regulation 6** of the Conduct Regulations.

7.15 The severity assessment for investigations held under Schedule 3 to the 2002 Act follows a similar process, as set out in **Regulation 16** of the Complaints Regulations, in circumstances where the investigation is subject to the special procedure in accordance with **paragraph 19A** of Schedule 3. It is important to note that the severity assessment in investigations under the Conduct Regulations is completed at the start of the investigation process by the appropriate authority, whereas, in the investigation of complaints or matters under the 2002 Act and the Complaints Regulations, the severity assessment is a different assessment which is completed by the investigator, or as the case may be the Director General, once the investigation is underway and **paragraph 19A** of Schedule 3 applies. See the IOPC statutory guidance for further information on how the severity assessment is conducted in **paragraph 16, 18 and 19** investigations.

APPOINTMENT OF THE INVESTIGATOR

7.16 In cases being dealt with under the Conduct Regulations, the appropriate authority, having assessed the conduct allegation as one which, if proved, would amount to misconduct or gross misconduct and is not suitable for informal action, must appoint a person to investigate the matter. Conduct matters involving chief officers should be referred to the IOPC under the mandatory referral criteria. See IOPC's guidance which includes a separate annex on chief officer matters.

7.17 The investigator can be a police officer, police staff member or another person, providing they are the most appropriate person with the necessary level of knowledge, skills and experience, as set out in **Regulation 15** of the Conduct Regulations. The investigator may not be an interested party or work, directly or indirectly, under the management of the officer concerned.

7.18 It should be noted that, where the officer concerned is a senior officer, the investigator cannot be the chief officer of their police force, or a member of the same police force as the officer concerned, or serving in the same command as the officer concerned where they are a member of the metropolitan police force. The exception is made here for the metropolitan police service because of its size and the likely degree of association between senior officers.

7.19 In cases being dealt with under the Complaints Regulations, the appropriate authority must ensure that an investigator appointed under **paragraphs 16 or 18** of Schedule 3 to the 2002 Act has the necessary knowledge, skills and experience as set out in **Regulation 12** of the Complaints Regulations.

7.20 In cases being dealt with under **paragraph 18** of Schedule 3 to the 2002 Act (i.e. directed investigations), the appropriate authority must follow the appropriate provisions in that paragraph regarding the approval of the investigator by the Director General of the IOPC.

7.21 In cases being dealt with under **paragraph 19** of Schedule 3 to the 2002 Act (i.e. independent investigations), the Director General will designate a person to take charge of the investigation.

7.22 Before a **paragraph 19** investigation is commenced, the force's Professional Standards Department should be consulted to ensure that there are no other matters which need to be considered prior to the investigation – for example, other ongoing investigation/s or outstanding live written warnings.

ROLE OF THE INVESTIGATOR

7.23 The investigator must carry out the investigation in a fair and proportionate manner, taking account of all the evidence given to them and coming to an assessment based on what they have reviewed.

7.24 It is essential that the investigator ensures that they are adopting a fair and consistent approach throughout the lifetime of the investigation, including in relation to disclosure of documentation or information.

7.25 In cases being investigated under the Part 3 of the Conduct Regulations, the investigator must ensure that the officer concerned 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 officer of the progress of the investigation at least every 4 weeks following the written notice being given - see **Regulation 17(7)** of the Conduct Regulations.

7.26 There is also a more general requirement under the 2002 Act for the appropriate authority, or Director General,[4] to keep the complainant or an interested person informed in relevant cases – see **Part 4** of the Complaints Regulations. See IOPC guidance for further information on this.

7.27 The officer concerned, or their police friend where acting on the officer concerned's instructions, is encouraged to suggest any lines of enquiry at an early stage which would assist the investigation and to pass any material they consider relevant to the investigator. This is particularly important when providing a response to the investigator following the notice of investigation, outcome of the severity assessment and terms of reference for the investigation.

7.28 The investigator has a duty to consider the suggestions submitted to them within the timeframe set out in Regulations, as well as submissions made by a complainant or other relevant parties. They should document reasons for following or not following any submissions made by the officer concerned or their police friend in order to ensure that the investigation is as fair and transparent as possible. This will allow a balanced investigation report to be prepared and, where appropriate, made available for consideration at the misconduct meeting or hearing stage.

SPECIAL PROCEDURE IN INVESTIGATIONS

7.29 Investigations carried out under Schedule 3 to the 2002 Act may be subject to the special procedure. The conditions for applying the special procedure are set out in **paragraph 19A** of Schedule 3**.** This covers:

a) where the investigation is one which relates to a complaint and during the course of the investigation, it appears to the person investigating or, in the case of an investigation by a designated person under **paragraph 19** of Schedule 3 the Director General, that there is an indication that the member of a police force or special constable may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings,
OR

b) where there is an investigation of a complaint being carried out by a person appointed under **paragraph 18** of Schedule 3 and during the course of the investigation the Director General determines that there is an indication that the member of a police force or special constable may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings,
OR

c) where the investigation is one which relates to a Recordable Conduct Matter and it relates to a member of a police force or special constable.

[4] Where a local policing body takes on "Model 3" for complaints handling, the duties of the chief officer (as the appropriate authority) to keep the complainant informed and to provide information to other persons under sections 20 and 21 of the 2002 Act, will be exercised by the local policing body rather than by the chief officer.

7.30 Where one of the conditions of the special procedure applies the process as set out in **Regulations 16-22** of the Complaints Regulations should be followed which is further explained in this chapter.

NOTIFICATION TO THE OFFICER CONCERNED

7.31 For cases investigated under the Conduct Regulations, the investigator, as soon as reasonably practicable after being appointed, must provide the officer concerned with written notification that they are under investigation and the outcome of the severity assessment under **Regulation 17** of the Conduct Regulations. A template for this notice can be found at Chapter 24. This notice will:

a) describe the conduct which is the subject of the investigation and how that conduct is alleged to fall below the Standards of Professional Behaviour,
b) explain the result of the severity assessment conducted by the appropriate authority,
c) explain the result of any assessment as to whether the form of proceedings is likely to be a misconduct meeting or hearing, and inform the officer that this may be revised by the appropriate authority, and the officer informed of this and the reasons for this,
d) inform the officer that they may provide, within 10 working days of receipt of the terms of reference, or receipt of notice that the terms of reference will not be shared, a written or oral statement relating to any matter under investigation and the officer, or their police friend, may provide any relevant documents to the investigator within this time,
e) inform the officer that there will be an investigation into the matter and the name of the investigator,
f) inform the officer that, if they were to be dismissed following misconduct proceedings, information including the officer's full name and a description of the conduct which led to their dismissal will be added to the police barred list and may be subject to publication for up to 5 years,
g) inform the officer that they have the right to seek advice from their staff association or other body and the right to have a police friend,
h) inform the officer that they have the right to be represented by a relevant lawyer at any misconduct hearing or accelerated misconduct hearing. If the officer decides not to be legally represented, they may be represented by a police friend. The notice must make it clear that if the officer decides not to be legally represented, they may be dismissed, or receive any other outcome of disciplinary proceedings, without being represented,
i) inform the officer that whilst they do not have to say anything, it may harm their case if they do not mention when interviewed or providing any information within the relevant time limits something which they later rely on in any disciplinary proceedings.

7.32 The notice should be written in clear and unambiguous language. Where the officer has a need to obtain an accessible version of the notice, this will be provided to them. The Regulation notice does not need to be reissued to the officer concerned simply because there is a revision in the severity assessment, but must be reissued where the nature or substance of the investigation changes.

7.33 It is also very important for the officer to be aware of which legal regime the notice is being issued under, i.e. either the Conduct Regulations or the 2002 Act/ Complaints Regulations, and the investigator should therefore provide the officer with clear notice of the legal basis of the investigation that they are subject to.

7.34 The investigator need not provide the written notice to the officer concerned where to supply this information would not satisfy the harm test under **Regulation 6** of the Conduct Regulations. Similarly, where the investigator, or the Director General as the case may be, feels that to provide this information would prejudice this or any other investigation, the officer concerned will not be provided with the notice. Any decision not to provide written notice to the officer should be recorded by the decision-maker and kept under regular review.

7.35 The early provision of a detailed notice will afford the officer the opportunity and incentive to engage as much as possible in making their written response, covered at paragraph 7.41.

7.36 A similar process is followed for matters being investigated under the Special Procedures provisions in the 2002 Act and the Complaints Regulations. The duty of the investigator is to provide the written notice as per **Regulation 17** of the Complaints Regulations. The investigator need not provide the written notice to the officer concerned where to supply this information would not satisfy the prejudice test, set out in **Regulation 17(4)** of the Complaints Regulations i.e. where providing it might prejudice the investigation or any other investigation. See the IOPC statutory guidance for further information.

7.37 Alongside the written notification under **Regulation 17** of the Conduct Regulations or **Regulation 17** of the Complaints Regulations, the investigator must also draw up the terms of reference for the investigation and provide these terms to the officer concerned, subject to certain exemptions. The terms of reference are a description of the main aspects of the investigation and are likely to include the following information:

a) what the investigation is going to cover,
b) the nature and details of the allegation and the Standard of Professional Behaviour breached if appropriate,
c) objective of the investigation,
d) the investigator's role and responsibilities,
e) scope including any key lines of enquiry,
f) any reporting timescales or milestones, including any review mechanisms,
g) how the exchange and storage of information will be handled,
h) any other information the investigator believes is relevant.

7.38 Terms of reference make it clear what the investigator's remit is and help to ensure that investigations are conducted in a timely and effective manner. Providing these terms to the officer concerned ensures a greater level of transparency within investigations so that the officer can understand precisely what they are under investigation for and the lines of enquiry for such an investigation. The provisions of terms of reference should encourage the officer concerned to cooperate in and engage with the investigation and produce more detailed responses to Regulation notices and at interviews.

7.39 For investigations under the Conduct Regulations:

a) the provision of the terms of reference must ordinarily be given at the same time as the written notice to the officer under **Regulation 17** of the Conduct Regulations. This will be undertaken by the person investigating in both cases. However, where this is not possible, the notice should be served first and the

terms of reference provided to the officer within 5 working days, beginning with the first working day after the day on which the notice is given.

b) where the terms of reference for the investigation cannot be shared with the officer concerned, when balanced against the harm test or where the investigator feels that it would prejudice this or any other investigation, the terms of reference do not need to be shared. Instead, the investigator must prepare a written note, subject to the prejudice test, stating that the terms of reference will not be provided and explaining the reasons, see **Regulation 17(2)(b) and (6)** of the Conduct Regulations. This note should be given to the officer at the same time as the written notice under **Regulation 17** of the Conduct Regulations where practicable or within 5 working days of that notice being provided. It should be noted that the intent behind these regulations is that terms of reference should be provided wherever possible, unless there is a compelling reason why doing so would be contrary to the harm or prejudice test.

c) where the terms of reference are revised by the investigator in the course of the investigation, the investigator must provide the officer concerned with the revised terms, as soon as practicable, subject to the prejudice test.

d) the **Regulation 17** notice may be withdrawn later in the process where the appropriate authority considers that no further action will be taken and the investigation is concluded – see **Regulation 21(7)** of the Conduct Regulations.

7.40 For investigations under the Complaints Regulations, a similar process should be followed – see IOPC statutory guidance.

REPRESENTATIONS TO THE INVESTIGATOR

7.41 For investigations under the Conduct Regulations, as set out in **Regulation 18** of the Conduct Regulations, following the terms of reference being provided under **Regulation 17,** or written notice that they will not be provided, and before the end of 10 working days, the officer concerned may make representations to the investigator. This is an essential opportunity for the officer concerned to engage in this process and provide a written or oral statement to the investigator. It provides the officer a clear opportunity to give an account to set out their version of events and an explanation of their role and actions within the circumstances that are under investigation.

7.42 As part of the response to the **Regulation 17** notice, the officer concerned, or their police friend, may also provide any documents they consider relevant to the investigator e.g. documents with suggestions of lines of enquiry.

7.43 In investigations dealt with under Schedule 3 to the 2002 Act, the officer concerned may make representations to the person investigating, following the process above and set out in **Regulation 20** of the Complaints Regulations.

7.44 Under both sets of Regulations, providing a detailed account at this stage, with specifics to respond to the matters outlined in the terms of reference for the investigation can aid the investigator in establishing the facts of the case and the officer's view of the circumstances of the incident or matter which is crucial alongside other evidence in establishing a clear understanding of events to inform decisions related to the involvement of and ultimately the case to answer in respect of an officer under investigation.

7.45 This account should include any mitigating circumstances or factors which are relevant to the investigation of the matter. It is important that mitigation is made known to the investigator as early in the process as possible to allow the investigator to fully assess the implications of the investigation and consider the most appropriate action.

7.46 The investigator must consider the representations and documents provided by the officer concerned and record receipt of these. The investigator may also extend the 10 working day time limit for provision of these representations, where they consider it necessary.

CONSIDERATION OF THE SPECIAL CONDITIONS

7.47 The investigator should consider, during the course of the investigation, whether the appropriate authority would be likely to consider that the special conditions are met to subject the case to accelerated procedures for fast tracking misconduct proceedings.

7.48 The special conditions are set out in **Regulation 49(2)** of the Conduct Regulations and **paragraph 20A** of Schedule 3 to the 2002 Act. The conditions are that:

a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct and,
b) it is in the public interest for the officer concerned to cease to be a member of a police force or special constable without delay.

7.49 In cases under the Conduct Regulations and set out in **Regulation 21(3)** of the Conduct Regulations, where the investigator believes that the appropriate authority would be likely to determine that these conditions are met, the investigator must submit a report to the appropriate authority, including the following:

a) statement of the investigator's belief and the grounds for it,
b) written report of the investigation up until that point.

7.50 On receipt of such a report, the appropriate authority will make a decision as to whether the special conditions are met and may refer the case to be dealt with at an accelerated misconduct hearing. The purpose of such proceedings is to deal with cases where there is sufficient evidence to establish that the conduct of the officer constituted gross misconduct and the public interest criteria is met. This threshold can be met in circumstances including where the officer themselves has provided a written statement of their admittance of the gross misconduct.

7.51 In cases which are being investigated under Schedule 3 to the 2002 Act, the Director General may also have a role in the accelerated procedure, as set out below:

Where **paragraph 16** of Schedule 3 applies	the investigator must send the statement and report to the appropriate authority and, in certain cases, to the Director General
Where **paragraph 18** of Schedule 3 applies	the investigator may submit the statement and report to the Director General and the Director General may determine that the appropriate authority would be likely to

	consider the special conditions met and submit the statement and report to the appropriate authority
Where **paragraph 19** of Schedule 3 applies	the Director General submits the statement and report to the appropriate authority

7.52 These processes are set out fully in **Regulation 24** of the Complaints Regulations as well as the IOPC statutory guidance.

TIMELINESS OF INVESTIGATIONS

7.53 Investigations should be conducted as efficiently as possible, bearing in mind the effect which lengthy investigations can have on the officer concerned and any other affected people, including complainants and family members. There is an expectation that investigations will, in the majority of cases, take between 6-12 months to complete, although they may take less time than this where straightforward. In investigations which are particularly complex or linked to criminal investigations, investigation may take longer than 12 months.

7.54 For this reason, investigations which take longer than 12 months will, under **Regulation 19** of the Conduct Regulations be subject to an additional level of scrutiny by the local policing body.

7.55 In these circumstances, the appropriate authority must send a letter to the local policing body as soon as practicable following the end of 12 months, beginning with the date on which the allegation first came to the attention of the appropriate authority. The purpose of this letter is to ensure that particularly lengthy investigations are transparent and accountable. This is a matter of public confidence in maintaining an efficient investigation.

7.56 The letter should include the following information:

a) the date on which the allegation first came to the attention of the appropriate authority,
b) the date on which the officer concerned was given written notification of the investigation,
c) the progress of the investigation,
d) an estimate of when the investigation will be concluded and when the final report will be sent,
e) the reason for the length of time taken by the investigation, and,
f) a summary of the planned steps to progress the investigation and bring it to a conclusion.

7.57 There may be a valid reason for the investigation being lengthy and this should be adequately explained in the letter. For example, there will be some investigations which involve complexity, challenging circumstances and a level of seriousness which require close and detailed examination which can take a significant amount of time to complete, particularly if multiple individuals were involved. The provision of the letter at the 12 month stage, and any subsequent letters, should be seen as an opportunity to conduct a case review into the investigation to help determine the reasons for timescales and the actions which should be taken.

7.58 Where investigations continue past the initial 12 months, further such letters must be sent to the local policing body every 6 months thereafter.

7.59 This information does not need to be provided to the local policing body where to do so would prejudice this, or any other, investigation. Subject to the harm test, at **Regulation 6** of the Conduct Regulations, this document must also be provided to the officer concerned.

7.60 The requirements for investigations conducted under the 2002 Act are set out in **Regulation 13** of the Complaints Regulations and IOPC statutory guidance. For investigations conducted under **paragraph 16** of Schedule 3 to the 2002 Act, this letter would be sent by the appropriate authority to the Director General and local policing body and copied to the complainant or interested person, subject to certain restrictions. For investigations conducted under **paragraph 18 or 19** of Schedule 3 to the 2002 Act, this letter would be sent by the Director General to the local policing body and chief officer of the force, unless the subject of the investigation is the chief officer, as well as any complainant or interested person, subject to certain restrictions.

INTERVIEWS DURING INVESTIGATIONS

7.61 For interviews during investigations carried out under the Conduct Regulations, this process is set out in **Regulation 20** of the Conduct Regulations. During an investigation, the investigator may require the officer concerned to be interviewed. It should be noted that it will not always be necessary to conduct a formal interview with the officer concerned and may be more appropriate to request a written account from the officer instead. Where no interview has been convened, this does not indicate that there is less evidence in such an investigation and written accounts allow the officer to provide any additional evidence that they are aware of which may be considered by the investigator. In deciding whether or not to hold an interview, investigators should consider the need and purpose of holding the interview and what further information they are seeking to obtain from the person they intend to interview.

7.62 Where an officer has provided a full and detailed account in response to the Regulation notice and terms of reference, this may well, in some circumstances, negate the need for a formal interview and no adverse inference should be drawn against the officer. Ultimately a decision to hold an interview is at the discretion of the person investigating and can be beneficial in exploring the account of the officer as well as providing the opportunity to ask follow-up questions or probe further where an account has been given.

7.63 Where the investigator feels that a formal interview is necessary, the investigator must agree a date, time and place for the interview with the officer concerned and their police friend if appropriate. The interview cannot take place where the officer concerned has not received the terms of reference for their investigation, or the written notice which states that no terms will be given, under paragraph 7.39.

7.64 For investigations held under Schedule 3 to the 2002 Act, this process is set out in **Regulation 21** of the Complaints Regulations and IOPC statutory guidance.

7.65 Prior to the interview, the investigator should consider inviting representations from the officer concerned regarding disclosure in order to avoid the risk of delay

caused by the officer concerned having to make these representations during the interview. The investigator should respond accordingly to any representations by, or on behalf, of the officer concerned.

7.66 The officer concerned must attend the interview and it may be viewed as a further misconduct matter to fail to attend this interview.

7.67 In some circumstances, there may be legitimate reasons why the officer concerned, or their police friend, is unable to attend the interview. The officer concerned may propose an alternative date or time and, if it is reasonable and falls within 5 working days, beginning with the first working day after the day originally specified by the investigator, the interview will be postponed to accommodate this request. Officers under investigation should not seek to avoid or extend an investigation by making unreasonable requests and/or failing to attend an interview.

7.68 It is 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 officer the opportunity to consider the evidence and provide a full and meaningful response at interview. Putting specific evidence to the officer at or prior to interview provides a good opportunity to clarify the officer's account and resolve areas of dispute or differing interpretation. This information should include specific details of the allegations being brought against the officer concerned including any relevant dates and places.

7.69 The person investigating should consider, before giving the officer concerned this information, whether there is a good reason to withhold all or some of the evidence collected during the investigation. If there is no good reason, the investigator should share with the officer concerned all the relevant evidence obtained during the investigation up until that point. During the interview, the officer concerned will have the opportunity to respond to the evidence disclosed by the investigator.

7.70 Where the officer concerned is on certificated sick leave, the person investigating should establish when the officer will be fit for interview. It may be that the officer is not fit for police duty but would be capable of being interviewed. Alternatively, the officer concerned may be asked to provide a written response to the allegations within a specified period and may be sent the questions which the investigator wishes to ask.

7.71 It is essential that the welfare of the officer concerned is balanced against the need to ensure an efficient investigation as quickly as possible in the interests of justice.

7.72 Where the officer is the subject of an investigation and is to be questioned for their involvement or suspected involvement in a criminal offence, any interview will be carried out under caution, in accordance with the Police and Criminal Evidence Act 1984 ("PACE") Codes of Practice. Where the matter includes both criminal and misconduct allegations, it should be made clear to the officer concerned at the start of the interview whether they are being interviewed in respect of the criminal or misconduct allegation.

7.73 This may be achieved by conducting two separate interviews, although this does not prevent the responses given in the criminal interview being used in the

misconduct investigation. So as to achieve consistency and clarity in the evidence where the criminal and misconduct allegations arise from the same factual background and are essentially coextensive, good practice in many cases will be to immediately commence the misconduct interview on completion of the criminal interview. After giving the appropriate caution, the investigator should ask the officer whether they are willing to adopt the answers given in their criminal interview for the purposes of the misconduct interview or whether they would like to add or amend any responses provided during that interview.

7.74 Care should be taken when conducting a misconduct interview where the officer concerned is also subject to a criminal investigation in respect of the same or related behaviour as anything said by the officer concerned 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 needed, appropriate legal advice should be obtained.

7.75 At the start of a misconduct interview, or when asking the officer concerned to provide a written response to the allegation, the officer concerned should be reminded of the effect of **Regulation 17(1)(h)** of the Conduct Regulations or **Regulation 17(1)(h)** of the Complaints Regulations for those cases held under the 2002 Act.

7.76 A record of the interview should be given to the officer concerned after the interview has been conducted, either as an electronic recording or a written summary of the interview. Where this is provided by written summary, the officer concerned should be given the opportunity to review the record and sign that they agree that it is an accurate record of what was said.

7.77 Where the officer concerned refuses or fails to exercise their right to agree and sign a copy, this will be noted by the investigator. The officer concerned may make a note of the change(s) they wish to be made and a copy of this will be sent to the investigator and the person conducting the hearing or meeting at a later stage, if appropriate.

CASES INVOLVING MORE THAN ONE ALLEGATION

7.78 Where an appropriate authority is considering more than one allegation in relation to the same officer, 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.

7.79 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.

7.80 Where separate allegations are being considered, particularly in the course of disciplinary proceedings, this can impact upon the sanctions available and where there are multiple findings of misconduct at a misconduct hearing, it is possible for a panel in considering these multiple findings to determine that a higher sanction, up to and including dismissal, may be justified.

CONDUCTING INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS WHERE THERE ARE POSSIBLE OR OUTSTANDING CRIMINAL PROCEEDINGS

7.81 Where there are possible or outstanding criminal proceedings against an 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.

7.82 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. If there is any doubt then advice should be sought from the Crown Prosecution Service (CPS) or other relevant prosecuting authority.

7.83 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 an accelerated misconduct hearing. The matter will be investigated under the relevant regime 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 there is a case to answer, no referral to misconduct proceedings or an accelerated misconduct hearing will take place if this would prejudice the criminal proceedings, as per **Regulation 10** of the Conduct Regulations.

7.84 In the Complaints Regulations, **Regulation 40** provides a general power of suspension that provides for the Director General or the appropriate authority as appropriate to suspend (and subsequently resume) any investigation or procedure that may prejudice any criminal investigation or proceedings.

7.85 In a case where a witness is to appear at disciplinary proceedings and is also a potential witness at a criminal trial then the appropriate authority must first consult with the CPS or other prosecuting authority. Having carefully considered their views, the appropriate authority must then decide whether it would prejudice a criminal trial if disciplinary proceedings are brought.

7.86 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 procedures for conducting an accelerated misconduct hearing.

7.87 The decision as to when to proceed with disciplinary proceedings rests with the appropriate authority and is taken under **Regulation 23** of the Conduct Regulations, where the appropriate authority no longer considers there to be prejudice. Where relevant, the appropriate authority may liaise with the CPS or other prosecuting authority from the case to answer stage onwards, sharing information as necessary. This will be particularly relevant at the end of disciplinary proceedings, where there are also outstanding or possible criminal proceedings involving the officer concerned,

and the CPS or other prosecuting authority should be informed of the outcome, as soon as practicable.

DISCIPLINARY PROCEEDINGS FOLLOWING CRIMINAL PROCEEDINGS

7.88 Subject to the guidance above, where disciplinary 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 bringing disciplinary proceedings is a reasonable exercise of discretion in the light of the acquittal.

7.89 A previous acquittal in criminal proceedings in respect of an allegation which is the subject of disciplinary proceedings is a relevant factor which should be taken into account in deciding whether to continue with those proceedings. Even in circumstances where there has been a criminal acquittal it can still be appropriate for disciplinary proceedings to be brought on the basis that they serve an entirely separate purpose to criminal proceedings. Disciplinary proceedings serve to maintain professional standards and discipline in policing, including in determining whether the actions of an officer have breached the Standards of Professional Behaviour in a manner so serious as to justify disciplinary action.

7.90 Disciplinary proceedings also carry a different standard of proof, that is whether a matter is proven on the balance of probabilities, which is lower than the criminal threshold of beyond reasonable doubt.

7.91 Relevant factors in deciding whether to proceed with disciplinary or accelerated 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,
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,
d) whether there are issues of professional (mis)conduct arising from the case that suggest disciplinary proceedings may be justified.

7.92 Each case must be considered and determined on its own merits and an overly prescriptive formula should not be adopted.

7.93 It may be unfair to proceed with disciplinary proceedings in circumstances where there has been a substantial delay in hearing disciplinary or accelerated proceedings by virtue of the prior criminal proceedings. A panel will need to consider the complexity and seriousness of a case when assessing if disciplinary proceedings are fair.

7.94 Due regard and consideration should be given to factors that include:

- the impact of the delay on the police officer (including the impact on their health and career),
- whether the delay has prejudiced their case in any disciplinary proceedings, and
- whether there will be a further substantial delay whilst disciplinary proceedings are heard (including the impact on the police officer of that delay).

7.95 Ultimately the appropriate authority must, in making any determination, balance these considerations against the overriding public interest and the purpose of the police disciplinary system and its role in upholding public confidence in policing.

7.96 Further detailed information about the case to answer determination and decision as to whether to refer a case to disciplinary proceedings is set out in Chapter 8.

SECTION 2: HANDLING AND INVESTIGATIONS

CHAPTER 8: POST-INVESTIGATION REPORTS, CASE TO ANSWER AND DETERMINATIONS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The process and procedure for concluding investigations into the conduct of an individual, including those carried out in accordance with Schedule 3 to the 2002 Act or the Conduct Regulations, including the preparation of the report on the investigation. It also explains how the case to answer determination and decision to refer an officer to disciplinary proceedings is made, depending on the circumstances and who the decision maker is.

IT INCLUDES GUIDANCE ABOUT

- Introduction
- Director General (IOPC): Delegation
- Content of investigation report and opinion
- Case to answer and referral process following investigations by or under the direction of the Director General: Response by the appropriate authority
- Case to answer and the decision to bring disciplinary proceedings

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Persons responsible for investigating and preparing the report of an investigation
- The Director General of the IOPC (and those delegated to make decisions on their behalf
- Appropriate authorities
- An officer under investigation
- Police Friend representing an officer

INTRODUCTION

8.1 This chapter provides guidance on the process for completing investigation reports following an investigation into the conduct of a police officer. This includes investigations carried out under Conduct Regulations or under **paragraphs 16, 18 and 19** of Schedule 3 to the 2002 Act. It sets out the process for the formulation of opinions by the appropriate authority or the Director General of the Independent Office for Police Conduct (IOPC) (in cases involving independent IOPC or directed investigations) and the role of the appropriate authority within this process.

8.2 The chapter also sets out the decision-making process for determining whether there is a case to answer and whether an officer should be referred to disciplinary proceedings. It explains this two-stage decision that the appropriate authority (under the Conduct Regulations) and the Director General (under Schedule 3 to the 2002 Act) must make:

(i) in deciding whether the person who is the subject of an investigation has a *case to answer for misconduct or gross misconduct*?

and, if so,

(ii) ***should disciplinary proceedings be brought against that person?***

8.3 Once this decision has been made, based on the contents of the report of the investigation, an officer can:

a) be referred to disciplinary proceedings in the form of a misconduct meeting or a misconduct hearing in accordance with the Conduct Regulations or
b) be referred to the Unsatisfactory Performance Procedures (UPP) in accordance with the Performance Regulations or
c) be referred to the Reflective Practice Review Process for handling Practice Requiring Improvement, in accordance with Part 6 of the Conduct Regulations or
d) face no further action.

DIRECTOR GENERAL (IOPC): DELEGATION

8.4 When this guidance refers to "the Director General", as elsewhere and in primary legislation and regulations, this always means the Director General of the IOPC or any person acting on their behalf. The Director General has powers to designate a person employed by the IOPC to "take charge of the investigation" and such other members to assist.[5] The Director General also has general overarching powers[6] to authorise employees of IOPC or seconded police officers to carry out functions on their behalf.

CONTENT OF INVESTIGATION REPORT AND OPINION

8.5 There are different requirements as to the content of a report and decision making depending on whether the investigation has been carried out independently by the Director General under **paragraph 19** of Schedule 3 to the 2002 Act, under direction under **paragraph 18** of Schedule 3 or by the appropriate authority under **paragraph 16** of Schedule 3 or under the Conduct Regulations. These differences flow from the development of the legislation, the need to reflect wording in the two regimes under the 2002 and 1996 Acts and the need to allow for the Director General to delegate their investigative and decision-making functions to different individuals. For practitioners, the differences are summarised in the table below.

[5] Paragraph 19(2) of Schedule 3 to the 2002 Act
[6] Paragraph 6A of Schedule 2 to the 2002 Act

Table summarising different legislative requirements for investigation reports and decision making

Legislation	Written investigation report must:	Additional requirements?	Notes
Conduct Regulations Regulation 21	26 Include an accurate summary of the evidence 27 Attach or refer to relevant documents 28 Indicate the investigator's opinion as to whether there is a case to answer (CTA) in respect of misconduct[1] or gross misconduct 29 Where there is no case to answer, indicate the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the Reflective Practice Review Process. (i.e. would the conduct if proved, amount to Practice Requiring Improvement? Should the matter be dealt with under the Performance Regulations; or should the appropriate authority take no further action?)		[1]"Misconduct" defined in the 2020 Conduct Regulations as "a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action."
Paragraph 16 of Schedule 3 to the 2002 Act - Director General requires the appropriate authority to make an investigation on its own behalf or the appropriate authority decides to carry out an investigation on its own behalf and where paragraph 19A of Schedule 3 applies (special procedure where investigation relates to police officer or special constable) Requirements at **Regulation 27** of the Complaints Regulations	30 Include an accurate summary of the evidence 31 Be accompanied by or refer to any relevant documents 32 Include the opinion of the person investigating as to whether: 32.1 any person to whom the investigation related has a case to answer in respect of misconduct[2] or gross misconduct or no case to answer; 32.2 whether or not any such person's performance is unsatisfactory; 32.3 whether or not any matter which was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process. It is best practice for non-special procedure investigation reports to include the investigator's opinion on Reflective Practice i.e. the same as is required for a special procedures investigation report under **Regulation 27(3)(e)** of the Complaints Regulations.		[2] "misconduct" takes its meaning under **paragraph 29** of Schedule 3 to the 2002 Act (ie. Primary legislation) – "a breach of the Standards of Professional Behaviour".
Paragraph 18 of Schedule 3 **(investigation "directed"** by the Director General of IOPC) – and where special procedures apply (Paragraph 19A)	33 Include an accurate summary of the evidence 34 Be accompanied by or refer to any relevant documents (see Regulation 27 of the Complaints Regulations *Note: the Director General's opinion will accompany the report but is separate from it and will include the Director General's opinion as to whether any person to whom the investigation related has a case to answer in respect of misconduct[2] or gross misconduct or no case to answer; 34.1 whether or not any such person's performance is unsatisfactory; 34.2 whether or not any matter which was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process.	Director General of the IOPC seeks the views of the appropriate authority (under **paragraph 23A** of Schedule 3), the Director General gives opinion as to whether: • person to whom the investigation related has a case to answer in respect of misconduct[2] or gross misconduct, or has no case to answer, 35 any such person's performance is unsatisfactory or not, 36 disciplinary proceedings should be brought; and if so, what form they should take (taking into account the seriousness of any breach of	[2] "misconduct" takes its meaning under **paragraph 29** of Schedule 3 (i.e. Primary legislation) – "a breach of the Standards of Professional Behaviour".

		the Standards of Professional Behaviour), 37 performance proceedings should be brought, 38 any matter which has been the subject of the investigation should be referred to be dealt with under Reflective Practice Review Process.	
Paragraph 19 of Schedule 3 (**independent investigation** by the IOPC) and where special procedures apply (**Paragraph 19A**)	39 Include an accurate summary of the evidence 40 Be accompanied by or refer to any relevant documents (see **Regulation 27** of the Complaints Regulations) 41 *See note above		
Paragraph 19A of Schedule 3 ("**special procedure**" investigation) - where an independent investigation by the Director General	42 Include an accurate summary of the evidence 43 Be accompanied by or refer to any relevant documents		

8.6 Having completed an investigation, the person investigating must as soon as practicable submit a written report of the investigation. The requirements of what must be included in the report or accompany it are set out in **Regulation 21** of the Conduct Regulations for investigations under those regulations and **Regulation 27** of the Complaints Regulations for investigations under the 2002 Act. See table above. There should be no unnecessary or unreasonable delay in the preparation and completion of these reports. The investigation report should be completed with care. It is an important document on which key decisions will be based. The non-special procedure investigation report should include the investigator's opinion.

8.7 As the legislation[7] sets out (and see table at 8.5 for summary), written reports of an investigation must:

a) provide an accurate summary of the evidence available to the investigator
b) attach or refer clearly to any relevant documents

8.8 It is good practice to include a schedule of documents whether used or unused.

8.9 The term "relevant document" is not defined in the Conduct Regulations specifically in relation to the report of the investigation and takes its plain English meaning. For the purposes of investigations under Schedule 3 to the 2002 Act, it is defined as "a document relating to any complaint or matter under investigation (and includes a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed)."[8] For the purposes of **Regulation 21** of the Conduct Regulations and **Regulation 27** of the Complaints Regulations the question of what is a relevant document will be for the investigator, taking into account any relevant case law. It may be that, when it comes before the appropriate authority applying the same test, a different answer is reached when considering the totality of the documents gathered by the investigator.

8.10 The report should be written objectively and in plain English and clearly explain any technical terms. The purpose of the investigation report is to:

[7] In relation to reports of investigations under Schedule 3 to the 2002 Act, see Regulation 27 of the Complaints Regulations and see Regulation 21 of the Conduct Regulations.
[8] Regulation 1(2) of the Complaints Regulations

a) include the scope of the investigation, as set out in any terms of reference set during the course of the investigation,
b) explain how the investigation has met any objectives set, as established by the terms of reference or otherwise,
c) explain what the complaint, conduct or DSI matter is about including any relevant background and the circumstances of the matters under investigation,
d) set out all the key facts and evidence gathered and provide an analysis of the evidence (including what is disputed or not disputed in different versions of events),
e) include all relevant evidence (any material is relevant if it has bearing on: the allegation under investigation, any person under investigation, the surrounding circumstances),
f) to be focused and proportionate in the summary of evidence but contain enough information to understand what happened and to form the basis on which the decision on case to answer should be taken. See the IOPC's statutory guidance on reports for further guidance.

8.11 There are additional requirements for the contents of the report and what needs to accompany it, depending on a) under which regime the conduct has been investigated - i.e. whether that matter was investigated under and in accordance with the Conduct Regulations or the different regime under the Schedule 3 to 2002 Act - and b) the person on whose behalf the report is being prepared (i.e. the appropriate authority or Director General). See table above. This affects both what is included and how it should be subsequently handled.

8.12 The investigation report will effectively have two distinct parts:
a) a factual and objective description of key facts and analysis of the evidence - which will inform the opinion and decision at (b) below and, secondly,
b) the opinion or view in respect of the case to answer question, including the factors taken into account in forming those views or opinions and the reasons for those decisions.

8.13 In the case of independent investigations by or under the direction of the Director General of the IOPC (under **paragraph 18 or 19** of Schedule 3 to the 2002 Act), the "opinion" section is not part of the investigation report itself.

8.14 Once submitted, the investigation report with these two distinct parts will form the basis of the decision-making process and formal determination as to whether there is a case to answer and whether any matters will be referred to subsequent disciplinary proceedings.

8.15 Where an investigation report is prepared by an investigator on behalf of the appropriate authority - in cases under the Conduct Regulations or investigations under **paragraph 16** of Schedule 3 to the 2002 Act - both elements will be included in the report itself, as described below.

Investigations Completed in Accordance with the Police (Conduct) Regulations 2020

8.16 As set out in **Regulation 21** of the Conduct Regulations, any investigation report must also indicate the investigator's opinion:

a) as to whether there is a case to answer in respect of misconduct or gross misconduct,
b) or whether there is no case to answer.

8.17 The definitions that are being applied for these cases under the Conduct Regulations are the definitions of Misconduct and Gross Misconduct for the purposes of bringing disciplinary proceedings in accordance with Part 4 of those Regulations and as described elsewhere in this guidance. That means the thresholds being applied here are as set out below:

	Case to Answer for	**Definition** ***(under the Police (Conduct) Regulations 2020)***
Definitions for the purposes of bringing Disciplinary Proceedings	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal,
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[9]

8.18 Therefore, in order for the investigator to be of the opinion that there is a case to answer for misconduct, they must be satisfied that the matters in the report, if proven, would justify at least a written warning. See Chapter 4 of this guidance for more detail on this and the purpose of disciplinary proceedings.

8.19 The investigator should also set out their opinion, where their view is that the matter(s) contained within the report should be referred to disciplinary proceedings, on the form that they propose those proceedings should take. For circumstances related to misconduct, this will be a misconduct meeting, unless there are live sanctions which mean that the officer must be referred to a misconduct hearing. For cases related to gross misconduct, the form of proceedings will be a misconduct hearing. This is set out in **Regulation 23(10)** of the Conduct Regulations.

8.20 In accordance with **Regulation 21(2)(d**) of the Conduct Regulations where in the investigator's opinion there is no case to answer, the report must indicate the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the Reflective Practice Review Process. The investigator may also provide the opinion that where there is no case to answer and the definitions below are not met that no further action should be taken.

8.21 In providing the opinion based on the contents of the report, the investigator will have reference to the definitions set out below in recommending whether such a referral would be appropriate.

[9] Disciplinary action means at least a written warning or above

	Definition	**How the matters would be handled**
Practice Requiring Improvement	underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics *Regulation 2(1) of the Conduct Regulations*	Under Part 6 of the Police (Conduct) Regulations 2020
Unsatisfactory Performance	inability or failure of a police officer to perform the duties of the role or rank the officer is currently undertaking to a satisfactory standard or level. *Regulation 4(2) of the Performance Regulations*	First or second stage of the Police (Performance) Regulations 2020
Gross Incompetence	a serious inability or serious failure of a police officer to perform the duties of the officer's rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking into account the officer's attendance, to the extent that dismissal would be justified. This will ordinarily be in circumstances of a single incident or event. *Regulation 4(1) of the Performance Regulations*	Third stage of the Police (Performance) Regulations 2020

8.22 Where the investigator is satisfied that these definitions do not apply and in their view there is no case to answer, the investigator can provide the opinion that based on the evidence, the appropriate authority should make a determination that no further action should be taken.

8.23 Having completed the report of the investigation and provided their opinion in respect of the matters set out above and in accordance with **Regulation 21** of the Conduct Regulations, the report will be submitted to the appropriate authority who will be the formal decision maker in accordance with **Regulation 23** of the Conduct Regulations as to whether there is a case to answer and whether the officer should be referred to subsequent disciplinary proceedings.

Appropriate Authority Investigations Completed in Accordance with Paragraph 16 of Schedule 3 to the 2002 Act

8.24 Where an investigation has been conducted by the appropriate authority in accordance with **paragraph 16** of Schedule 3 to the 2002 Act (i.e. an investigation on its own behalf), the report on the investigation (subject to special procedures) will be prepared in accordance with **Regulation 27** of the Complaints Regulations.

8.25 In these circumstances, the requirements set out at paragraphs 8.5 – 8.15 in this Chapter must be accompanied by the opinion of the person investigating as to the following:

a) It is best practice for non-special procedure investigation reports to include the investigator's opinion on Reflective Practice i.e. the same as is required for a special procedures investigation report under **Regulation 27(3)(e)** of the Complaints Regulations.

b) **whether any person to whose conduct the investigation has related has a case to answer in respect of misconduct or gross misconduct or has no case to answer**

In providing this view the person investigating is providing their view in respect of case to answer in accordance with the following definitions, which are set out in the 2002 Act (which is distinct from definitions for the purposes of bringing disciplinary proceedings).

Case to Answer for	**Definition under *the Police Reform Act 2002***
Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal
Misconduct	a breach of the Standards of Professional Behaviour

In relation to misconduct, all the investigator is considering is whether there may have been a breach of the Standards of Professional Behaviour, without at this stage needing to determine whether such a breach would be serious enough as to justify disciplinary proceedings or (if proven) at least a written warning.

c) **whether or not any such person's performance is unsatisfactory**

Unsatisfactory Performance	an inability or failure of a police officer to perform the duties of the role or rank the officer is currently undertaking to a satisfactory standard or level
Gross Incompetence	a serious inability or serious failure of a police officer to perform the duties of the officer's rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking into account the officer's attendance, to the extent that dismissal would be justified

d) **whether or not any matter which was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process.**

8.26 In line with the Conduct Regulations, the **paragraph 16** investigator should not express an opinion as to whether and in what form proceedings should be brought. This is a matter for the appropriate authority which will consider the investigator's report in accordance with **paragraph 24** of Schedule 3 to the 2002 Act and with **Regulation 23** of the Conduct Regulations (see **Regulation 23(2)**), and consider whether the officer has a case to answer in respect of misconduct within the meaning of the 2002 Act – a breach of the Standards of Professional Behaviour.

8.27 Whilst the appropriate authority shall consider whether there is a case to answer, in such circumstances that there is no misconduct identified, the appropriate authority will go on to consider **Regulation 23(5)** of the Conduct Regulations: does the case amount to Practice Requiring Improvement; should it be dealt with under the Performance Regulations; or should it take no further action?

Practice Requiring Improvement	underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics

Reports of Investigations Carried Out by the Director General of the IOPC

8.28 Where an investigation has been conducted in accordance with **paragraph 18** or **paragraph 19** of Schedule 3 to the 2002 Act, i.e. an independent or directed investigation, separate provisions apply for the preparation of the investigation report and decision-making process which is led by the Director General. These provisions only apply where the requirements for special procedures are met (**paragraph 19A** of Schedule 3 to the 2002 Act) – the investigation relates to a police officer or special constable and is an investigation of a matter where there may have been a criminal offence; where there is an indication that disciplinary proceedings could be justified; or of a recordable conduct matter. For further guidance on special procedures, see the IOPC's statutory guidance.

8.29 This is set out in **Regulation 27** of the Complaints Regulations. Reports of investigations carried out independently by or under the direction of the Director General of the IOPC are different from the reports of local investigations. As is the case with reports of local investigations, the reports themselves should not draw conclusions as to whether there is a case to answer.

8.30 The report will be accompanied by the Director General's opinion on the matters set out below. This opinion must be provided to the appropriate authority to enable the appropriate authority to provide its views. See below. The Director General must consider the appropriate authority's views (if any) in making the determination as to whether there is a case to answer and whether the officer should be referred to disciplinary proceedings. See **paragraph 23(5A)** of Schedule 3 to the 2002 Act.

8.31 Accordingly, when sending the investigation report, the Director General must, under **Regulation 27(3)** of the Complaints Regulations, provide the appropriate authority with their opinion as to the following matters:

a) whether any person to whose conduct the investigation has related has a case to answer in respect of misconduct (i.e. a breach of the Standards of Professional Behaviour or gross misconduct or whether there is no case to answer (see below for more on the case to answer decision.)

b) whether or not any such person's performance is unsatisfactory,

Unsatisfactory Performance	an inability or failure of a police officer to perform the duties of the role or rank the officer is currently undertaking to a satisfactory standard or level
Gross Incompetence	a serious inability or serious failure of a police officer to perform the duties of the officer's rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking into account the officer's attendance, to the extent that dismissal would be justified

c) **whether or not disciplinary proceedings should be brought against any such person** taking into account, in particular, the seriousness of any breach of the Standards of Professional Behaviour,

i) In forming a view as to whether disciplinary proceedings would be justified, the Director General should have regard to the definitions associated with disciplinary proceedings set out in the Conduct Regulations.

	Case to Answer for	**Definition** ***under the Conduct Regulations***
Definitions for the purposes of bringing Disciplinary Proceedings	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[10]

ii) This means that there is effectively a two stage process for determining whether there is a case to answer for

[10] Disciplinary action means at least a written warning or above

misconduct in cases investigated under Schedule 3[11]*. It requires a determination firstly as to whether there has been a breach ("misconduct" under the 2002 Act) and secondly where there is such a case to answer, whether the breach of the Standards of Professional Behaviour is so serious as to justify disciplinary action (which means a written warning or higher).*

iii) A view that disciplinary proceedings should be brought can only be provided where the Director General is of the opinion that there is a case to answer on both of these definitions.

iv) The Director General should also set out their opinion, where their view is that the matter(s) contained within the report should be referred to disciplinary proceedings, the form that they propose those proceedings should take. For circumstances related to misconduct, this will be a misconduct meeting, unless there are live sanctions which mean that the officer must be referred to a misconduct hearing. For cases related to gross misconduct, the form of proceedings will be a misconduct hearing. (See ***Regulation 23(10)*** *of the Conduct Regulations.)*

d) **whether or not unsatisfactory performance procedures should be brought against any such person and, if so, what entry level to those proceedings should be taken or the form those proceedings should take**

i) Where the Director General is of the view that the report contains evidence of unsatisfactory performance or gross incompetence, this should be accompanied by a view as to what form or stage of the unsatisfactory performance procedures the individual should be referred to.

e) whether or not any matter which was the subject of the investigation should be referred to be dealt with under the Reflective Practice Review Process as Practice Requiring Improvement.

i) In these circumstances, where the Director General is minded to give the view that disciplinary proceedings should not be brought, they should provide a view as to whether there are matters that constitute Practice Requiring Improvement, that should be referred to the Reflective Practice Review Process.

[11] Schedule 3 to the 2002 Act

ii) This can include circumstances where there is evidence that leads the Director General to the opinion that there may have been a breach of the Standards of Professional Behaviour, but one that, if proven, is not serious enough to justify disciplinary proceedings because the matter, if proven, would not warrant at least a written warning.

Practice Requiring Improvement	**underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics**

CASE TO ANSWER AND REFERRAL PROCESS FOLLOWING INVESTIGATIONS BY OR UNDER THE DIRECTION OF THE DIRECTOR GENERAL: RESPONSE BY THE APPROPRIATE AUTHORITY

8.32 Having completed the report, the Director General must - under **paragraph 23(2)** of Schedule 3 to the 2002 Act - send a copy of the investigation report in such cases to the appropriate authority, together with their written opinion (**Regulation 27** of the Complaints Regulations).

8.33 The appropriate authority may send views to the Director General on both the report and opinion. The legislation[12] does not make this a requirement or give detail. In commenting, the appropriate authority may wish to consider the nature of the investigation, the summary of evidence and key facts in the investigation report, as well as having regard to operational issues that the report may have considered.

8.34 In relation to the Director General's opinion, the appropriate authority may wish to consider the following:

a) Does the seriousness of the allegations and supporting evidence support there being a case to answer for misconduct or gross misconduct or no case to answer?
b) Has the opinion on the case to answer determination been reached in accordance with this guidance?
c) Has the opinion in relation to the bringing of proceedings taken all relevant factors into account, including the purpose of proceedings and associated thresholds?
d) Taking into account the nature of the allegation, evidence and circumstances, is it appropriate for matters in the report to be handled in accordance with formal disciplinary or unsatisfactory performance procedures or alternatively, as Practice Requiring Improvement using the Reflective Practice Review Process?

8.35 If it takes issue with the content of the investigation/report or disagrees with the Director General's opinion, the appropriate authority should say so and set

[12] Paragraph 23(5A) of Schedule 3 to the 2002 Act

out the reasons as to why as fully as possible and send any supporting information.

8.36 The appropriate authority will normally offer its views based solely on the report and the opinion of the Director General. However, in those cases where it is necessary to do so, should the appropriate authority request specific documents referred to in the report so that it is able to offer its views to the Director General, the Director General should provide those documents insofar as the request is reasonable.

Timescales for response to the Director General

8.37 The appropriate authority must send its views, if any, as soon as possible, and within 28 calendar days. If 28 calendar days have elapsed with no views provided, and no representations made for extension (see below), the Director General may assume that there are no views to consider. The deadline, as set out at **Regulation 27(4) and (5)** of the Complaints Regulations, is aimed at providing a clear cut off point and certainty in the process in respect of timely process and decision making. This requirement reflects the expectations that the timescales for IOPC investigations and subsequent decision-making processes should be efficient and proceed without delay in the interests of fairness and natural justice.

8.38 The appropriate authority may seek an extension from the Director General and the Director General should consider such reasonable requests for extension. Reasonable requests may include: particularly complex cases and/or where there is a large volume of documentation or whether there are multiple subjects involved.

Director General's decision

8.39 The Director General should consider the views of the appropriate authority before making the final decision on whether there is a case to answer.

8.40 As necessary, the Director General may consult the appropriate authority and seek clarification in respect of the report and any differences in opinion or views that have been provided for the purposes of the report and case to answer process.

8.41 Having considered the appropriate authority's views, the Director General will then make their final decision on case to answer and whether proceedings should be brought and the form they should take, which is set out below.

8.42 Having made the decision that proceedings should be brought, the Director General then must "direct the appropriate authority to bring those proceedings".[13] They should do so in writing (including electronically).

8.43 The appropriate authority must comply with a direction given and must secure that the proceedings, once brought, are proceeded with to a proper conclusion. See later chapter of this guidance on bringing proceedings. The appropriate

[13] In accordance with paragraph 23(5A) of Schedule 3 to the 2002 Act

authority is also required to notify the Director General (or persons acting on their behalf at IOPC) on the action it is taking.

8.44 The legislation provides for the Director General to at any time withdraw a direction given to bring proceedings.[14] So if, for example, fresh evidence or new or compelling legal advice on the case to answer decision comes to light, the Director General can amend their decision to bring proceedings, following consultation with the appropriate authority.[15] Similarly, the Conduct Regulations also allow for the appropriate authority to review its decision and withdraw proceedings[16] but the appropriate authority must first obtain a direction of the Director General to withdraw where the Director General gave a direction to bring the proceedings under **paragraph 23(5A)(e)** or **27(4)(a)** of Schedule 3 to the 2002 Act or made a recommendation under **paragraph 25(4C)(c)** of that Schedule.

8.45 In a case to which **paragraph 16, 18 or 19** of Schedule 3 to the 2002 Act applies, where the Director General has not made a direction to bring proceedings, the appropriate authority may only withdraw proceedings following consultation with the Director General.[17]

CASE TO ANSWER AND DECISION TO BRING DISCIPLINARY PROCEEDINGS

Overview

8.46 The following guidance sets out the process for making the determination whether there is a case to answer, in respect of misconduct or gross misconduct and, if so, and secondly, whether disciplinary proceedings should be brought.

Referral of a case to misconduct proceedings: decision-makers

8.47 **Regulation 23** of the Conduct Regulations sets out the test for referral to misconduct proceedings in relation to investigations under Part 3 of the Conduct Regulations and Schedule 3 to the 2002 Act.

8.48 In the case of an investigation which is conducted under Part 3 of the Conduct Regulations, or as a "local investigation" under **paragraph 16** of Schedule 3 to the 2002 Act, the decision to refer the case to misconduct proceedings rests with the appropriate authority.

8.49 In the case of investigations which are conducted in accordance with **paragraph 18** ("directed investigations") and **paragraph 19** ("independent investigations") of Schedule 3 to the 2002 Act, the decision to refer a case to misconduct proceedings rests with the Director General of the IOPC under **paragraph 23** of Schedule 3 and **Regulation 23** of the Conduct Regulations.

8.50 To ensure consistency and clarity across the two regimes, the provisions in the Conduct Regulations, specifically **Regulation 23**, set out the case to answer

[14] Paragraph 23(5C) of Schedule 3 to the 2002 Act
[15] Regulation 27(4)(a) of the Conduct Regulations
[16] Regulation 27(1) and (4)(a) of the Conduct Regulations
[17] Regulation 27(4)(b) of the Conduct Regulations

test and process for referral of police conduct cases, and reflect the revised "two stage" process at **paragraph 23** of Schedule 3 to the 2002 Act. As set out in the Government's explanatory memoranda to both sets of Regulations,[18] the primary and secondary legislation on case to answer has been amended to clarify the two stage procedure that applies in these different cases but also to ensure there is a single framework to be followed by all parties in making case to answer and proceedings determinations.

8.51 There are two key questions a decision maker – the appropriate authority or the Director General of the IOPC - must make as part of this process under the two regimes as revised in 2020.

Case to answer and the decision to bring proceedings: summary
Stage 1
(1) On the basis of the evidence, is there a case to answer for gross misconduct or misconduct? **See below for guidance on the test and on the evidential threshold for case to answer is discussed below. If yes, proceed to Stage 2.**
Stage 2
If the case to answer test is met, should proceedings be brought? - **are there any compelling reasons why in circumstances where there is a case to answer for misconduct or gross misconduct, it is in the public interest that proceedings should <u>not</u> be brought?** **See guidance below.**

8.52 Ultimately, where there has been a determination that there is a case to answer it is for the appropriate authority or the Director General, as the case may be, to provide clear justification and rationale for proceedings not to be brought.

Is there a case to answer for misconduct or gross misconduct?

8.53 The decision-maker must consider the investigation report and any accompanying documents or evidence.

8.54 They are required to consider whether there is a case to answer for either misconduct or gross misconduct. They must make this decision for all and each of the allegations against the officer or officers subject of the investigation. The allegation or list of allegations to be investigated will be sent in a notice to the subject officer (or officers) in accordance with the notices served at **Regulation 17** of the Conduct Regulations or **Regulation 17** of the Complaints Regulations.

[18] The explanatory memoranda (not yet drafted) are laid in Parliament alongside the regulations.

	Case to Answer for	**Definition** ***under the Police (Conduct) Regulations 2020***
Definitions for the purposes of bringing Disciplinary Proceedings	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[19]

8.55 The first step is to consider what the allegations are and facts are and whether they will support a decision that there is case to answer in respect of either misconduct or gross misconduct or no case to answer**.**

8.56 The decision maker cannot make a finding of a case to answer for misconduct or gross misconduct unless there is evidence to support a breach of the Standards of Professional Behaviour that would be so serious a**s** to justify the bringing of disciplinary proceedings.

8.57 In accordance with the definition of misconduct for the purposes of bringing disciplinary proceedings set out in the Conduct Regulations, there can only be a case to answer for misconduct where the alleged breach of the Standards of Professional Behaviour is so serious that if proven it would justify at least a written warning.

8.58 In cases where there has been an investigation in relation to alleged gross misconduct, the decision-maker needs to consider:

i. whether the alleged misconduct, if proved, would amount to a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal?
ii. If so, and if the case to answer test is met (see below), they should find that there is a case to answer for gross misconduct.

If the case against the officer concerned is not considered this serious but that the matter still justifies a referral to disciplinary proceedings, then the decision maker should determine that there is a case to answer for misconduct only.

8.59 In considering levels of seriousness of misconduct and the question of whether the breach of Standards of Professional Behaviour amounts to misconduct versus gross misconduct, decision-makers should have regard to the College of Policing's Guidance on Outcomes in Police Misconduct proceedings. Aggravating factors, for example, will include, for example, any misconduct against a vulnerable person, or where discrimination is evident. As part of assessing the seriousness in cases, culpability will also be an issue to consider. But, care should be taken not to stray into matters to be properly considered by the panel or meeting.[20]

[19] Disciplinary action means at least a written warning or above
[20] "Guidance on Outcomes in Police Misconduct proceedings", published by the College of Policing (October 2017). Check for updates. https://www.app.college.police.uk/wp-content/uploads/2017/10/MIsconduct-C621I0617_Guidance-on-outcomes-in-police-misconduct-proceedings_12.10.17.pdf

The case to answer decision

The test

8.60 The term "case to answer" is used but is not defined in the primary legislation or the relevant regulations. It is, however, a familiar concept in common law and in other disciplinary and professional contexts.

8.61 The **test for case to answer or central question** to be answered is as follows:

> ***Is there sufficient evidence, upon which a reasonable misconduct meeting or a reasonable disciplinary hearing panel could make a finding on the balance of probabilities of either***
>
> **(i) misconduct or**
> **(ii) gross misconduct?**

Legal background and context

8.62 The test for case to answer (as it is reflected in common law and other regimes), is a modified version of the so called "Galbraith test" (based on the well-known criminal law authority).[21] That test is modified for case to answer because it is applied before the disciplinary proceedings themselves are brought and because, in the circumstances of police disciplinary proceedings, a lower standard of proof is applied. In the police disciplinary context this is determined on "*the balance of probabilities*" - rather than concluding that it is "beyond all reasonable doubt", the standard of proof applied for convictions in the criminal courts. The test and evidential threshold for decision makers at the case to answer stage is therefore necessarily lower than finding the matter proven on "the balance of probabilities" as at the disciplinary hearing or meeting. In summary, it is a test of possibility not probability ("could" rather than "would").

8.63 Case law [22] on case to answer decisions (specifically those by the IPCC in the past) - and based on the legal framework prior to its amendment by the Policing and Crime Act 2017[23] - has been clear that the person exercising the decision as to whether there is a case to answer should not try to "step into the shoes" of the disciplinary hearing/panel or pre-empt the decision that the misconduct hearing (or meeting) will make.

8.64 The decision-maker is not seeking to establish whether the case is proven but rather whether a panel or person conducting proceedings *could* have grounds to find a case proven. The evidential threshold for case to answer is obviously higher than the "indication" test for starting an investigation into a conduct matter.

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[21] R-v- Galbraith [1981] 1WLR 1039. *".....Where... the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one **possible** view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty*

[22] E.g. Court of Appeal in *R (on the application of the Chief Constable of West Yorkshire v IPCC [2014] EWCA Civ 1367*

[23] E.g. *R (on the application of the IPCC Chief Executive) v IPCC [2016] EWHC 2993 (Admin)*

8.65 The person making the decision as to whether there is a case to answer should not make their own finding of misconduct or gross misconduct nor are they making an assessment as to whether there is a "reasonable prospect" of the meeting or panel making such a finding (as for example, a decision-maker would under the Crown Prosecutors' Code). Instead, the person deciding whether or not there is a case to answer must evaluate and consider whether the evidence – both in its nature and quality- is sufficient to allow for a reasonable panel at hearing or meeting to properly reach such a finding. If they conclude that it is, then, they must make a finding of case to answer.

Key principles for 'case to answer' decision-makers

8.66 Decision-makers should bear these guiding principles in mind in exercising the case to answer test. They should:

a) consider the evidence in support of each individual allegation as a whole including both its strengths and its weaknesses, including, subject to parameters, considering the credibility of different evidence (see guidance below).
b) never assess and weigh up the merits of evidence to such an extent that it becomes a judgment on the balance of probabilities as to whether there has been misconduct or gross misconduct.
c) never make a 'finding of fact' or draw conclusions as to whether the evidence supports an actual finding of misconduct or gross misconduct.
d) stop short of making decisions or even expressing a view on findings on the questions that fall to be answered by the disciplinary proceedings.

The evidential threshold: how does the decision-maker know if this is met?

8.67 As noted above, the evidence should be thoroughly considered and an assessment and evaluation of the amount, the nature and the credibility of the available evidence should be made. The evidence may be finely balanced. The important questions to ask are:

Is there sufficient evidence that a disciplinary panel or meeting could properly make a finding of misconduct or gross misconduct on the balance of probabilities?

Or alternatively:
Is there insufficient evidence or evidence so weak that no reasonable disciplinary panel or meeting could properly make such a finding?

Conflicting witness evidence

8.68 In some situations, there will be no dispute over evidence in issue (e.g the complainant, witness and subject all agree in their accounts of what happened). But, often investigators are faced with conflicting accounts of the facts from, for example, a police officer and the complainant.

8.69 The decision maker should not automatically dismiss evidence of a tenuous nature, for example, witness evidence which is weak, vague or inconsistent with other evidence.

8.70 They should not usually seek to resolve conflicts. There will be cases where, for example, two witness accounts – *one witness' word against another* - are on an analysis of the evidence equally plausible. That is to say, one account, if it were proved or found to be credible, could properly support a finding by a reasonable panel or meeting of misconduct or gross misconduct. In such cases, the case to answer decision-maker should not attempt to resolve that conflict between accounts or form a view on the reliability of witness evidence based on that witness evidence alone. In these circumstances, it will usually be correct to decide that there is a case to answer. It is ultimately the role of a misconduct meeting or hearing to take into account witnesses' evidence both in chief and under cross-examination along with the witnesses' demeanour in order to make a decision about which account to accept.

Credibility of witness evidence

8.71 However, a "one person's word against another" scenario does not automatically mean the case to answer test is met.

8.72 There will be investigations where one witness account is inherently implausible on the basis that it is contradicted by the weight of other evidence or undermined or contradicted by other clear evidence (such as CCTV or documentary evidence, or a person alleged to have been at a location at a given point in time but who could not possibly have been there) in such cases, a finding of no case to answer may be found.

8.73 But, one witness account may be implausible – and obviously less credible than another, for example: the witness stands to gain materially from making an allegation, which is otherwise uncorroborated, the account is inherently fanciful or based on hearsay or contradicted by the overwhelming weight of other evidence so as to impact on its credibility.

8.74 When determining if there is a case to answer, as a general rule, it is the credibility of the account that is evaluated not the credibility of the witness.

8.75 "Character evidence" can, subject to strict rules, be used to show that a witness' evidence is not credible, but such judgements should be exercised rarely, as this will usually be for the panel or meeting to determine. In exceptional circumstances it will be persuasive in making the judgement about what a reasonable panel or meeting might find, for example, recent criminal convictions for perverting the course of justice or evidence that a complainant has made malicious allegations in the past. Previous convictions in general do not undermine witness credibility for the purpose of the case to answer test.

8.76 Such factors, coupled with an assessment that the account cannot be corroborated in any other way, *may* be enough to conclude that no reasonable disciplinary panel or hearing could properly make a finding of gross misconduct or misconduct based on it alone.

8.77 Having taken each of the principles set out above and considered the evidence presented within the report of the investigation, along with the views of the appointed investigator, the Director General (or persons acting on the Director General's behalf) or the appropriate authority decision maker must determine whether there is a case to answer based on whether:

- ***there is sufficient evidence, upon which a reasonable misconduct meeting or a reasonable disciplinary hearing panel could properly find misconduct or gross misconduct proven on the balance of probabilities.***

	Case to Answer for	**Definition** ***(as defined by the Conduct Regulations)***
Definitions for the purposes of bringing Disciplinary Proceedings	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[24]

8.78 Having decided there is a case to answer for misconduct or gross misconduct (giving consideration to the above definitions and seriousness), they should move to the second stage of the decision-making process.

Should proceedings be brought?

8.79 Once the first part of the decision has been taken as to whether, based on the investigation and evidence available that there is a case to answer for misconduct or gross misconduct, a decision must be taken as to whether misconduct proceedings should be brought and the form that those proceedings should take. The legislation- **Regulation 23** of the Conduct Regulations - sets out the form proceedings should take in what circumstances. In summary, the requirements are as follows:

Case to Answer	**Other circumstances**	**Form of proceedings**
Misconduct	None	Misconduct Meeting
Misconduct	Live (final) written warning or reduction in rank at the point of severity assessment	Misconduct Hearing
Gross Misconduct	N/A	Misconduct Hearing

8.80 Crucially, the legislation provides that decision makers have discretion whether or not to bring proceedings, even if there is a case to answer.

[24] Disciplinary action means at least a written warning or above

- In the case of decisions by the Director General (or appropriate authority) under Schedule 3 to the 2002 Act, new **paragraph 23(5A)(b)** of Schedule 3 provides this discretion, and

- **Regulation 23** of the Conduct Regulations mirrors this.

Presumption in favour of proceedings: public interest

8.81 The legislation does not expressly cover the circumstances in which decision makers can exercise this discretion. The starting point here is that there is a presumption that there is an overriding public interest that police officers and those exercising police powers are subject to scrutiny and held to account for alleged wrongdoing. Public confidence in the system of policing and ensuring high and visible levels of accountability are crucial.

8.82 So, the presumption is that, where there is a case to answer for misconduct or gross misconduct, proceedings in the form of a meeting or a hearing should be brought, in the interests of maintaining public confidence and public safety. In part, this is based on the high seriousness threshold that applies for the bringing of disciplinary proceedings of any form, that is to say: a serious breach of the Standards of Professional Behaviour that would justify disciplinary action or dismissal if it were proven.

8.83 When considering whether to rebut the presumption, it is particularly important to bear in mind the purpose of disciplinary proceedings (set out in more detail in Chapter 4) and the extent to which these principles could be undermined by a decision not to bring proceedings:

a) to maintain public confidence in, and the reputation of, the police service,
b) to uphold high standards in policing and deter misconduct,
c) to protect the public.

8.84 Given the presumption of public interest, the case to answer decision-maker must ask the negative question:

are there any proper reasons that this matter (on which I have determined that there is a case to answer) should <u>not</u> go forward to disciplinary proceedings?

8.85 Given the threshold for the seriousness of a breach of the Standards of Professional Behaviour to amount to misconduct or gross misconduct (and the other factors – public confidence etc) compelling reasons will be required to rebut the presumption that disciplinary reasons should go ahead. More compelling reasons will be required to rebut this presumption in the case of gross misconduct than a case of misconduct given the higher level of seriousness.

When should a case not go to proceedings?

8.86 In considering whether to rebut the presumption that disciplinary proceedings should go ahead, decision makers should take into account a combination of factors in deciding that it is not in the public interest that a case proceeds.

8.87 The list of factors below is not exhaustive and not all the factors set out below will be relevant in every case. The weight to be attached to each will vary according to the facts and merits of each case. It is likely a combination of factors will be relevant.

Physical or ill-health of the subject of potential proceedings?

8.88 If the person who has been the subject of an investigation is suffering from serious physical or mental illness or injuries, including post-traumatic stress disorder (PTSD) or terminal illness, the question of whether it might be considered unreasonable for them to face proceedings could arise. In cases of gross misconduct, it would be exceptionally rare that any such circumstances would provide justification of not bringing proceedings. If an officer who is the subject of a case to answer decision is fit to serve as a police officer, then they will ordinarily be fit to be subject to disciplinary proceedings. If they are retiring on medical grounds, then the former officer provisions[25] would be the appropriate route to follow.

8.89 In relation to misconduct cases, ill-health might be a factor to consider, for example in conjunction with the question of proportionality. But, the decision maker should also consider the prognosis assessing whether the police officer is likely to become fit for disciplinary proceedings within a reasonable period of time. Illness or fitness should be based on medical evidence, provided by a suitably qualified medical professional, likely to be a specialist not a general practitioner.

Would referral to disciplinary proceedings be a disproportionate response in the circumstances of the case?

8.90 The question of proportionality may also be a factor in considering whether it is in the public interest that misconduct (rather than gross misconduct) cases are referred to proceedings. Did the alleged misconduct for which there is a case to answer happen several years ago, for example? So, for example, if the alleged misconduct happened some time ago and the outcome would have been a written warning that would by now have expired, this might be grounds not to proceed with a misconduct meeting.

Balancing such judgements

8.91 Such judgements will have to be balanced by the decision-makers against other factors that the decision-maker considers to be relevant, including those below and, in particular, the seriousness of the misconduct or gross misconduct for which a case to answer has been found and the purposes of imposing disciplinary action.

8.92 Issues to consider may include, but not exclusively, a combination of the following factors.

a) *Seriousness* is also a factor to consider in the context of balancing the judgement as to whether it is in the public interest to proceed. The decision-maker has already considered severity considering

[25] Former Officer provisions are set out regulation 4 of, and in Schedule 1 to, the Conduct Regulations.

whether there is sufficient evidence for a reasonable misconduct meeting or hearing to make a finding of either gross misconduct or misconduct (as part the case to answer test see above). If the alleged misconduct is so serious that it is in essence a criminal matter but a Crown Prosecutor has determined the Full Code Test is not met, or it is serious corruption, misconduct in a public office / corrupt or improper exercise of powers and privileges, or misconduct related to serious or high profile matters, it is very unlikely a decision not bring proceedings on public interest grounds will be justified.

b) Aggravating factors, for example, as illustrated by the categories that require referral to the IOPC for investigation (by virtue of being a Recordable Conduct Matter or Referable Complaint) will add to the presumption that proceedings should be brought.

c) The level of harm caused and the impact on others by the alleged misconduct or gross misconduct is a factor to take into account when considering whether the presumption should be rebutted. If serious harm or suffering has been caused then it is unlikely that a decision not to bring proceedings will be justified.

d) Culpability is also a relevant consideration when considering whether it is in the public interest that proceedings be brought (in a similar way to how prosecutors consider it as part of the decision on whether it is in the public interest to charge and prosecute for a criminal offence). Culpability is likely to be determined by the individual's level of involvement, the extent to which the misconduct was planned, their previous conduct record. But, it is unlikely that a decision not to bring proceedings could ever be based solely on the question of culpability. Decision-makers should bear in mind the capacity of a disciplinary hearing or panel to take such mitigations into account.

e) Impact on the subject or the public of a decision not to proceed will also be a factor in deciding whether to rebut the presumption that it is the public interest that a case goes to proceedings. Decision-makers will need to assess the impact on the officer or other subject who has had a case to answer decision made against them, but proceedings have not taken place. Although, such a decision will not be part of a formal disciplinary record, the ambiguity of the situation may be troublesome. Such a decision will be a matter of public record, not their disciplinary record. Victims of alleged misconduct or other members of the public including complainants and interested parties may also be affected by a decision not to hold an individual to account through the bringing of disciplinary proceedings.

8.93 Ultimately, it is for decision-makers to be able to exercise their discretion and judgment and to be able to set out and explain in writing the reasons for their decisions, so that all relevant parties can understand why such a decision has

been taken. This guidance does not override the discretion of decision-makers, nor is it exhaustive.

SECTION 3 DISCIPLINARY PROCESSES AND PROCEEDINGS	
This section contains guidance about misconduct proceedings including meetings, hearings and accelerated misconduct hearings. It guides parties to proceedings on their different roles, the different procedures, their purpose, notifications and possible outcomes.	**Page number**
CHAPTER 9: INTRODUCTION AND GENERAL	**101**
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SECTION 3: DISCIPLINARY PROCESSES AND PROCEEDINGS

CHAPTER 9: INTRODUCTION AND GENERAL

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The types and purpose of proceedings in cases of misconduct, the standard of proof required and best practice to ensure fair and timely proceedings.

THIS CHAPTER INCLUDES GUIDANCE ABOUT:

- Introduction
- Types of misconduct proceedings
- The purpose of misconduct proceedings
- Ensuring fair proceedings
- Standard of proof
- Joint misconduct proceedings
- The provision of documents
- Timing, timeliness and expediting the proceedings
- Withdrawal of misconduct proceedings
- Communications and notices

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers involved in disciplinary processes and proceedings
- Legally Qualified Chair Persons
- Police Friend representing an officer
- Police Professional Standards Departments
- Police HR Departments
- Counsel for appropriate authorities or officer concerned
- IOPC official (representing the Director General at a hearing)

INTRODUCTION

9.1 This chapter provides general guidance on disciplinary proceedings, the type of proceedings that might take place, the need for fairness and timeliness and best practice on how proceedings should be conducted. It should be read and understood by all practitioners and parties to the disciplinary process.

9.2 This section of guidance applies to police officers serving in England and Wales where misconduct proceedings or accelerated misconduct hearings are brought in accordance with Part 4 or Part 5 of the Conduct Regulations. Those Regulations are made under the powers conferred by section 50 and 51 of the Police Act 1996, as amended, concerning the conduct, efficiency and effectiveness of members of police forces and special constables and the maintenance of discipline. These powers (and therefore this section of guidance) do not apply to civilian police staff or designated policing volunteers. Disciplinary procedures for individuals serving with the police who are not police officers are set out in local force policy and procedures.

TYPES OF MISCONDUCT PROCEEDINGS

9.3 For the purposes of the Conduct Regulations, 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 or has been reduced in rank less than 2 years prior to severity assessment stage 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.

9.4 In addition, there are separate procedures for conducting accelerated misconduct hearings in accordance with Part 5 of the Conduct Regulations. Such procedures can only be instigated where the special conditions apply following a determination by the appropriate authority or Director General that:

a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct and
b) it is in the public interest for the officer concerned to cease to be a member of a police force or a special constable without delay.

9.5 It is important to understand the distinction between misconduct and gross misconduct, how they are defined and the thresholds for determining whether conduct may be considered under those categories and therefore whether disciplinary proceedings are appropriate and, if so, the form that proceedings should take. The box below outlines those definitions and thresholds.

	Type of Allegation	**Definition**	**How to be dealt with**
Definitions for the purposes of bringing Disciplinary Proceedings, as established by the Police (Conduct) Regulations	Gross Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal	Formal investigation Misconduct Hearing IOPC/PSD
	Misconduct	a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action[26]	Formal Investigation Misconduct Meeting (or a Misconduct Hearing if appropriate) IOPC/PSD

THE PURPOSE OF MISCONDUCT PROCEEDINGS

9.6 The purpose of a formal misconduct meeting or hearing is to:

a) give the officer a fair opportunity to make their case having considered the investigation report including supporting documents and to put forward any factors the 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 their consideration),

[26] Disciplinary action means at least a written warning or above

b) decide if the conduct of the officer breached the Standards of Professional Behaviour in a way that is so serious as to justify disciplinary action (misconduct) or in such a way that is so serious as to justify dismissal (gross misconduct). This determination is based on the balance of probabilities and having regard to all of the evidence and circumstances. Those making the judgment on the level of seriousness of the breach of the standards can be partly guided by the Code of Ethics,
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) and any early admission of the conduct by the police officer. Those making the decision on outcome should consider the College of Policing's Guidance on Outcomes in Police Misconduct Proceedings.

9.7 As we set out in Section 1, proceedings will vary on a case by case basis, depending on the seriousness and nature of the allegation and the related circumstances of the matters referred to proceedings. Whilst disciplinary proceedings are the same irrespective of how the matters come to light (whether by route of a complaint, death or serious injury or conduct matter), certain specific requirements are set out in the Regulations in certain cases, particularly where complainants or interested parties are involved. Within the framework as established by Part 4, the person chairing or conducting proceedings has discretion to determine the manner in which the proceedings are to be conducted and administered.

ENSURING FAIR PROCEEDINGS

9.8 All proceedings should be conducted in a fair and open manner following the principles of natural justice. That is to say that a duty to act fairly is incumbent on all parties to the proceedings. That includes the parties to the hearing providing the necessary notices and documents in a timely fashion and participating in the proceedings in a reasonable, courteous and fair manner. Both the appropriate authority (or the Director General, where presenting) and the officer concerned should be allowed to make their case free from interference and the person conducting or chairing the proceedings should be demonstrably free of bias.

9.9 The method of selection for panel members, including the chair of misconduct proceedings, is an important consideration in ensuring proceedings are conducted in accordance with principles of natural justice. The selection itself, and that for any subsequent proceedings, should not raise concerns of any perceived, or actual, unfairness.

STANDARD OF PROOF

9.10 In deciding matters of fact, the persons conducting the misconduct meeting or 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 persons conducting the meeting or hearing 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). The seriousness of the allegation of misconduct and/or the seriousness of the consequences for the officer do not require a different standard of proof, merely appropriately careful consideration by the panel before it is satisfied of the matter which has to be established. The inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when deciding whether, on the balance of probabilities, the conduct occurred.

9.11 In making a decision whether the alleged conduct of a police officer is proven or not, the persons conducting or chairing will need to exercise reasonable judgement and give appropriate careful consideration to the evidence.

JOINT MISCONDUCT PROCEEDINGS

9.12 As set out in **Regulation 25** of the Conduct Regulations, cases may arise where two or more officers are to appear before a misconduct meeting or hearing in relation to the same matter or incident. This can only occur where all or none of the officers involved are senior officers. The alleged misconduct may be different for each officer involved but it will normally be considered appropriate to deal with all the matters together.

9.13 An officer may request separate proceedings – for example, if they can demonstrate that there would be a real risk of unfairness to that officer if their case was dealt with jointly. It is for the person conducting or chairing the misconduct proceedings to consider and decide if separate proceedings are appropriate.

9.14 The decision as to whether to refer cases to joint proceedings can only be made once the determinations in respect of case to answer and referral to proceedings has been made for each individual officer.

9.15 In making this decision, it is important to bear in mind the interests of natural justice and the presentation of the fullest possible picture including consideration of evidence and witness testimony in what will often be complex cases. Joint proceedings in these circumstances can help the panel to consider the full context including the circumstances of the involvement of each individual officer as well as the case overall.

9.16 Where joint proceedings are held it is the duty of the persons conducting or chairing them to consider the case against each officer and where a breach of the Standards of Professional Behaviour is found or admitted, to deal with each officer's mitigation and circumstances individually, deciding on the outcome accordingly. The persons conducting or chairing the proceedings have the discretion to exclude the other subject officers if they determine it appropriate to do so. For example, when hearing the submissions of mitigation by each officer.

9.17 Where misconduct proceedings involve both senior and non-senior officers, it will not be possible for the case to be referred to joint proceedings due to the differences in panel composition and procedure for officers of such differing ranks, see **Regulation 25(6)** of the Conduct Regulations.

PROVISION OF DOCUMENTS

9.18 The provision of relevant documents to the parties to the proceedings is critical to the fair and effective running of those proceedings. The officer concerned should, subject to the harm test, be given a copy of the investigation report (or the part of the report which is relevant to them) under **Regulation 30(1)(c)** of the Conduct Regulations, together with any document attached to or referred to in the report relating to that officer and any other document which might reasonably be considered capable of undermining or assisting the case and a copy of their statement to the investigator. The investigator's schedule of material (see below) should also be attached, suitably redacted. These documents should be supplied to the officer as soon as practicable after the decision has been made to refer the matter to a meeting or a hearing.

Documents which might reasonably be considered capable of undermining or assisting the case

9.19 As set out above the appropriate authority must, subject to the harm test, provide the officer concerned with 'any other document which might reasonably be considered capable of undermining or assisting the case' (**Regulation 30(1)(c)(ii)** and **Regulation 51(1)(c)(ii)** of the Conduct Regulations). Whilst the Criminal Procedure and Investigations Act 1996 (CPIA) does not apply in these proceedings, it adopts the same threshold for disclosure and this test and associated CPIA guidance, should be followed when deciding whether to provide documents under **Regulation 30(1)(c)(ii)** and **Regulation 51(1)(c)(ii)** of the Conduct Regulations. "Document" should be interpreted to include any material including exhibits and electronic media. The appropriate authority has the power to require investigators to provide relevant documents, see **paragraph 22(8) and 22(9)** of Schedule 3 to the 2002 Act. For the sake of clarity, the use of test found in the CPIA, and reference to the CPIA in this document, is for the purpose of reference to that test only and should not be understood to import the rules of evidence in the criminal jurisdiction into misconduct proceedings. The rules of evidence for police misconduct proceedings are found in the Conduct Regulations.

9.20 In cases where the Director General is presenting the case, the appropriate authority must consult the Director General about the documents that may be provided and must comply with any direction given by the Director General in that regard – see **Regulation 30(10)** and **Regulation 51(3)** of the Conduct Regulations.

9.21 To assist in complying with the requirements for provision of documents the investigator should, when providing the appropriate authority with the investigation report, also attach all relevant documents gathered as part of the investigation and a schedule of all material retained by the investigation. Sensitive material should be indicated on the schedule.

9.22 It is then for the appropriate authority to determine what material should be served on the officer with the notice, beyond those documents referred to in **Regulation 30(1)(b) and (c)(i).** The officer concerned may request any material from the schedule which has not been provided, if they have good reason to believe it might reasonably be capable of undermining or assisting their case, notwithstanding the appropriate authority's assessment (as set out at 9.19 above). The officer concerned may also request such material which does not appear on the schedule. The appropriate authority may ask the investigator to make inquiries to recover such material if the appropriate authority considers the requests to be reasonable and proportionate.

9.23 It is the appropriate authority's responsibility to redact material served with the notice of referral to proceedings appropriately, including the schedule. Items described as sensitive on the investigator's schedule should normally be redacted (further to the 'harm test'). In any case of dispute, the chair can be asked to issue a direction following service of the notice.

9.24 The appropriate authority will keep its decisions as to disclosure under review in the light of all the issues in the case including those raised by the officer's response to the notice of proceedings and any requests for disclosure made by them. However, the appropriate authority must continue to determine whether documents might reasonably be considered capable of undermining or assisting the case and not simply accede to requests for material from the officer, without applying that test

and making a “blanket disclosure”.

9.25 Where there is a dispute in a directed case between the appropriate authority and the Director General as to the material to be disclosed or what it is reasonable and proportionate to do to recover material, the appropriate authority should serve the notice without the disputed material and then list the matter for directions before the person conducting or chairing the misconduct proceedings.

9.26 In these circumstances, it will be for the person conducting or chairing proceedings to hear representations to determine accordingly whether the recovery and/or provision of material is considered reasonable and proportionate based on the relevance to the case. The person conducting or chairing may issue directions on such matters which must be followed accordingly.

TIMING, TIMELINESS AND EXPEDITING THE PROCEEDINGS

9.27 It will be in the interests of all parties to the proceedings that the procedures are expedited as soon as practically possible and timings set out in Part 4 of the Conduct Regulations should be seen as the maximum time for the procedure to have taken place rather than the minimum time. Where a procedure can be done earlier with the agreement of all parties it should be expedited, as per **Regulation 22** of the Conduct Regulations. It will also help to improve the timing of hearing procedures where there is agreement on the facts of the case or no dispute of the evidence and for that to be made clear at an early stage in the process.

9.28 Where the officer admits the case, every effort must be made by all parties to expedite proceedings and seek to bring them to a timely resolution in order that the matters can be promptly concluded. Those conducting or chairing proceedings should look favourably on any early admittance to any part of the allegations by the officer concerned.

WITHDRAWAL OF MISCONDUCT PROCEEDINGS

9.29 Under **Regulation 27** of the Conduct Regulations, the appropriate authority[27] can decide that the officer concerned has no case to answer in respect of misconduct or gross misconduct at any time, or that it is no longer appropriate for disciplinary proceedings to be brought, before the proceedings begin. If it is satisfied that there is no case to answer the appropriate authority can direct that the case is withdrawn and take one of the following actions:

a) take no further action against the officer,
b) refer to Reflective Practice Review Process,
c) refer the matter to be dealt with under the Performance Regulations.

9.30 Where a decision has been made to withdraw the proceedings the appropriate authority must, as soon as practicable, give the officer concerned written notice, including whether action will be taken and, on request and subject to the harm test, a copy of the investigator’s report where completed.

9.31 Before making a determination to refer a matter to the Reflective Practice Review Process or to be dealt with under the Performance Regulations, the appropriate authority must consult with the line manager of the officer concerned.

[27] In cases where the Director General has directed that there is a case to answer or that proceedings be brought, proceedings can only be withdrawn on the direction of the Director General in consultation with the appropriate authority. In other cases to which paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act applies the appropriate authority must consult the Director General before withdrawing a case.

9.32 Before making a determination to withdraw any case where investigations have been conducted under **paragraphs 16, 18 or 19** of Schedule 3 to the 2002 Act, the appropriate authority must consult with the Director General. Where the Director General had previously recommended or directed that proceedings be brought under **paragraph 25(4C)(c), 23(5A)(e) or 27(4)(a)** of Schedule 3 to the 2002 Act, such a case can **only** be withdrawn following a further direction by the Director General in accordance with **Regulation 27(4)** of the Conduct Regulations**.**

COMMUNICATIONS AND NOTICES

9.33 Communications between the parties to the proceedings should follow the principles set out in this guidance. There is a duty on all parties to be fair, open and courteous in communications. This includes ensuring the provision of all relevant documents in a timely way, complying with the requirements of the Regulations regarding the exchange of information and adhering to protocols on the security of information.

9.34 It is best practice in the sending of these notices and responses to ensure that all relevant parties are copied into all relevant correspondence wherever appropriate.

9.35 It is essential that the language used in notifications is clear and unambiguous and that accessible versions are made available to those with a particular need. Notifications can be provided via electronic means or written communication, according to what is most appropriate and as determined by the person conducting or chairing the proceedings. **Regulation 9** of the Conduct Regulations makes further provision regarding the supply of written documents.

9.36 Best practice will also include:

- identifying how information will be shared,
- ensuring safe transfer of digital information,
- identifying points of contact,
- ensuring lengthy documents or evidence (for example CCTV evidence) are bookmarked where helpful and there is sufficient time to read, watch and understand.

SECTION 3: DISCIPLINARY PROCESSESS AND PROCEEDINGS

CHAPTER 10 MISCONDUCT MEETINGS

SYNOPSIS AND OVERVIEW
THIS CHAPTER RELATES TO:
The administration, attendance, conduct and outcomes of misconduct meetings.

THIS CHAPTER INCLUDES GUIDANCE ABOUT:

- Introduction
- Prior to a misconduct meeting – the Regulation 30 notice and response
- Person appointed to hold misconduct meetings
- Timing
- Documents for the misconduct meeting
- Witnesses
- Notice of the time, date, place and who will conduct the misconduct meeting
- Complainants and interested persons
- Attendance (and meeting in absence of officer concerned)
- Conduct of the meeting
- Consideration of outcome
- Outcomes of misconduct meetings and expiry of warnings
- Notification of outcome
- Appeals

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY:

- All Police Officers who are subject to disciplinary proceedings,
- Legally Qualified Chairs,
- Senior Officers appointed to misconduct meeting panels,
- Meeting panel members appointed by local policing bodies,
- Police Friend representing an officer at disciplinary proceedings,
- Appropriate authorities,
- Professional Standards Departments,
- Police HR Departments.

INTRODUCTION

10.1 This chapter outlines the procedures for a misconduct meeting including the action that should be taken before the meeting, the notices and documents required, the responsibilities to the officer concerned, the complainant and interested persons and the conduct and outcome of the meeting. It should be read and understood by all parties to a misconduct meeting.

PRIOR TO A MISCONDUCT MEETING – THE REGULATION 30 NOTICE AND RESPONSE

10.2 Where the appropriate authority considers that there is a case to answer in respect of misconduct because the matter is considered serious enough that if proven or admitted it would justify at least a written warning being given, then a misconduct meeting should take place.

10.3 If a final written warning is already in force at the time of the severity assessment the proceedings must not be a meeting but a misconduct hearing. Similarly, if the officer had been reduced in rank less than 2 years before the severity assessment, the proceedings must be a misconduct hearing (see **Regulation 23(10)(b) and (c)** of the Conduct Regulations). See Chapter 11 for the misconduct hearings process.

10.4 The appropriate authority must provide the officer concerned with a **Regulation 30** notice of referral to misconduct proceedings as soon as practicable following the decision to go ahead with the misconduct meeting. The notification must include the information set out at **Regulation 30(1)(a)** including the name of the person appointed to conduct or chair the misconduct meeting and the officer's right to object to the appointment. The officer concerned must, subject to the harm test, be given a copy of the investigation report (or the part of the report which relates to the officer) and any other documents which might reasonably be considered capable of undermining or assisting the case. The officer concerned must also be given a copy of any statement they made to the investigator. The investigator's schedule of material should also be attached, suitably redacted. These documents must be supplied to the officer as soon as practicable after the decision has been made to refer the matter to a meeting.

10.5 As set out in **Regulation 31** of the Conduct Regulations, the officer concerned must reply to the **Regulation 30** notice within 15 working days, unless this period is extended by the person conducting the misconduct meeting in exceptional circumstances, beginning with the first working day after being supplied with the investigator's report and the written notice described in **Regulation 30**. The officer must provide the appropriate authority with written notice of:

a) whether they accept that the conduct amounts to misconduct,
b) where they accept that their conduct amounts to misconduct, any written submission they wish to make in mitigation,
c) where they do not accept that their conduct amounts to misconduct, notice of the allegations they dispute and their account of events and, any arguments on points of law they wish to raise.

10.6 In all cases, the officer must provide the appropriate authority with any documents they may be relying on at the meeting. This **Regulation 31** procedure is an important opportunity for the officer to respond to the allegation of misconduct and will be critical for the running of the misconduct meeting.

10.7 The officer concerned should set out:

a) any representations they have as to redactions that should be made to the documents given to the officer concerned under **Regulation 30(1)** before they are supplied to the person conducting the meeting on the grounds that they amount to inadmissible material. For the purposes of this paragraph, inadmissible material means material that would cause the officer concerned unfair material prejudice if it were considered by the misconduct meeting as part of their determinations. For the avoidance of doubt, the investigator's opinion as to whether or not conduct amounts to misconduct, gross misconduct or neither is not admissible material,

b) any representations they have as to any redactions made by the appropriate authority to those documents,

c) any other representations they have with respect to outstanding matters of disclosure.

PERSON APPOINTED TO HOLD MISCONDUCT MEETINGS

10.8 As set out in **Regulation 28** of the Conduct Regulations, a misconduct meeting for non-senior officers (police officers up to and including the rank of Chief Superintendent and all special constables) will be conducted by:

a) where the officer concerned is a member of a police force, a police officer (or other member of a police force) of at least one rank above the officer concerned or a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned or
b) where the officer concerned is a special constable, a member of a police force of the rank of sergeant or above, or a senior human resources professional or a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned.

10.9 A police staff member must not be appointed to conduct a misconduct meeting if the case substantially involves operational policing matters.

10.10 This person will be appointed at the point when the appropriate authority determines under **Regulation 23** to refer the case to a misconduct meeting. The person appointed by the appropriate authority to conduct the misconduct meeting should not be an interested party. The person appointed to conduct the meeting and (where appropriate) the 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. 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, under **Regulation 8(6)** of the Conduct Regulations. The adviser's role is solely to advise on the procedure to be adopted and not as a decision maker.

10.11 As soon as practicable after any adviser has been appointed, the appropriate authority must notify the officer of the appointment and of their right to object to the appointment.

10.12 The officer will be informed by the appropriate authority of the person appointed to conduct or chair the misconduct meeting in the **Regulation 30(1)** notice. The officer will also have been informed as soon as practicable of any person appointed to advise that person under **Regulation 30(2)** of the Conduct Regulations. Where the misconduct meeting is to be conducted by a panel, the officer must be informed of the persons comprising the panel as soon as practicable after they have been selected (**Regulation 35(2)** of the Conduct Regulations). The officer may object to any of these appointments within 3 working days starting with the first working day after the officer was notified of the person's name, as set out in **Regulations 30(3) and (4) and 35(3) and (4)** of the Conduct Regulations. In doing so the officer concerned must set out clear and reasonable objections as to why a particular person should not conduct or advise at the proceedings. In the case of a chair or adviser appointed by the local policing body, the objection is made to that body. In the case of panel members other than the chair the objection is made to the chair of the misconduct meeting. In all other cases the objection is made to the appropriate authority.

10.13 If the officer concerned submits a compelling reason why such a person should not be involved in the proceedings, a replacement must be found and the officer will be notified of the name of the replacement and the officer concerned will have the

same right to object to that replacement, but not subsequent replacements. The officer concerned may object to persons conducting a misconduct meeting or advising at such proceedings if, for example, the persons 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.

10.14 A misconduct meeting for a senior officer will be conducted by a panel of three persons including:

a) a legally qualified person who will be the chair and is appointed by the local policing body on a fair and transparent basis, from a list of legally qualified persons maintained by that body,

b) Her Majesty's Chief Inspector of Constabulary (HMCIC) or an inspector of constabulary nominated by HMCIC, and

c) 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, selected on a fair and transparent basis. A "layperson" is defined in Schedule 6 to the Police Act 1996 and is a person who is not, and has never been, a member of a police force or special constable, civilian police staff, local policing body or other policing body as per the Act. The inclusion of the layperson member allows a further independent and impartial view at the meeting from outside policing.

TIMING

10.15 As per **Regulation 34** of the Conduct Regulations, a misconduct meeting must take place not later than 20 working days beginning with the first working day after the date on which the officer has replied to the **Regulation 30** notice (or from the time the 15 working day period, or such extended period, the officer is given under **Regulation 31** to reply elapses). Documents for the meeting must be provided to the officer as soon as practicable after the decision has been taken to refer the matter to a misconduct meeting and the notice has been issued.

10.16 The time limit for holding a misconduct meeting can be extended beyond the period of 20 working days if, in the interests of justice, the person conducting the meeting considers it appropriate. Any decision to extend or not to extend the time limit for a meeting and the reasons for it will be documented by that person and communicated to the appropriate authority and the officer concerned. It is also good practice to inform the police friend of the officer concerned.

10.17 In order to maintain confidence in the misconduct procedures it is important that misconduct meetings 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 the meeting should 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.

DOCUMENTS FOR THE MISCONDUCT MEETING

10.18 The appropriate authority must supply the person conducting or chairing the misconduct meeting, before the end of 10 working days beginning with the date on which the officer provided their response under **Regulation 31,** or such extended period, in accordance with **Regulation 32(6)** of the Conduct Regulations, with:

a) a copy of the notice (issued under **Regulation 30**) supplied to the officer concerned that sets out the fact that the case was to be referred to a misconduct meeting and details of the alleged misconduct.

b) a copy of the other documents provided to the officer under **Regulation 30(1**): the investigator's report or such parts of the report that relate to the officer concerned, any other document which might reasonably be considered capable of undermining or assisting the case and a copy of any statement made by the officer to the investigator.

c) the response provided by the officer concerned under **Regulation 31,** setting out:

i) whether or not they accept that their conduct amounts to misconduct,

ii) where they accept their conduct amounts to misconduct, any submission they wish to make in mitigation,

iii) where the officer does not accept that their conduct amounts to misconduct or they dispute part of the case:

a. the allegations the officer disputes and their account of the relevant events, and

b. any arguments on points of law submitted by the officer,

iv) any documents the officer wishes to rely on at the meeting, submitted under **Regulation 31** of the Conduct Regulations.

d) where the officer does not accept that their conduct amounts to misconduct or 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.

10.19 The documents for the meeting should not be given to the persons appointed to conduct the meeting until the time has lapsed for the officer concerned to object to the persons conducting the meeting and only after the officer has responded in accordance with their obligation under **Regulation 31**. The completed documents including any response from the officer (as set out in **Regulation 31**) must then be given to the persons conducting the proceedings at the same time as the officer concerned is given any documents that they have not already received.

WITNESSES

10.20 A witness will only be required to attend a misconduct meeting if the person conducting the meeting reasonably believes their attendance is necessary, in the interests of justice, 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.

10.21 As set out in **Regulation 31(4)** of the Conduct Regulations, the appropriate authority and the officer concerned must share, and if possible agree, the list of proposed witnesses, before the end of 3 working days, beginning with the first working day after the date on which the officer concerned responded to the **Regulation 30** notice, including brief details of the evidence that person can provide.

10.22 The list is then shared with the persons conducting the meeting, under **Regulation 32(1)** of the Conduct Regulations, by the appropriate authority, before the end of 10 working days beginning with the first working day after the parties supplied the notices under **Regulation 31(4).** This timescale may be extended

where it appears to the person conducting the meeting necessary to do so. The person conducting the misconduct meeting will decide, as soon as practicable, whether to allow such witnesses, on consideration of the lists of witnesses and the documents supplied to them under paragraph 10.18. The person conducting the meeting may also decide that a witness other than one on such lists should be required to attend (if their attendance is considered necessary).

10.23 Where the person conducting the meeting believes it is necessary for a witness to attend, they must, as per **Regulation 32(5)** of the Conduct Regulations, where the witness is a police officer, cause them to attend, and in any other case, cause the witness to be given notice that their attendance is necessary and provide them with the date, time and place of the proceedings.

10.24 Where the person conducting a misconduct meeting rejects the request for a particular witness to attend, the reasons for refusing to allow the attendance of the witness should be given to the officer concerned and the appropriate authority, or the Independent Office for Police Conduct (IOPC), where they have led on the management of the witness.

10.25 Whilst the person conducting the misconduct meeting will decide whether particular witnesses are required, the appropriate authority will be responsible for arranging the attendance of any witness and obtaining and serving witness summonses, if required. It is important that the welfare of witnesses is considered by the appropriate authority, particularly in the case of vulnerable witnesses.

10.26 Where a witness does attend to give evidence then any questions to that witness should be made through the person conducting the meeting. This does not prevent the person conducting the meeting allowing questions to be asked directly if they feel that is appropriate. It is for the persons conducting the meeting to control the proceedings and focus on the issues to ensure a fair meeting.

NOTICE OF THE TIME, DATE, PLACE AND WHO WILL CONDUCT THE MISCONDUCT MEETING

10.27 Under **Regulation 35** of the Conduct Regulations, the appropriate authority must give the officer concerned written notice of the date, time and place of the misconduct meeting. Where the meeting is to be conducted by a panel, the appropriate authority must give the officer concerned written notice of the names of such persons and of their right to object to the appointment – following the process set out in paragraph 10.12.

10.28 Where the Director General is entitled to attend the meeting to make representations, the appropriate authority must also give the Director General written notice of the date, time and place of the meeting.

COMPLAINANTS AND INTERESTED PERSONS

10.29 Misconduct meetings are held in private under **Regulation 39(2)** of the Conduct Regulations. However, where the investigation was conducted under Schedule 3 to the 2002 Act, the complainant and interested person can, subject to certain exceptions, attend the meeting as an observer and the appropriate authority must notify them of the date, time and place of the meeting as per **Regulation 40(2)** of the Conduct Regulations**.** If an individual has additional needs or special requirements, they also have the right to be accompanied at the meeting by someone who is helping them with that need and for reasonable adjustments to be made to facilitate their attendance.

10.30 Although the complainant and interested person cannot ask questions of the officer, the person conducting or chairing the meeting may, at their discretion, put any questions the complainant or interested person has to the officer concerned, as set out in **Regulation 40(5)** of the Conduct Regulations.

10.31 The person conducting or chairing the misconduct meeting may exclude a complainant or interested person from the misconduct meeting or impose conditions on their attendance as they see fit, having considered any relevant representations under **Regulation 39(3)** of the Conduct Regulations.

ATTENDANCE (AND MEETING IN ABSENCE OF OFFICER CONCERNED)

10.32 It is in the interests of fairness to ensure that the misconduct meeting is held as soon as possible. As set out in **Regulation 34** of the Conduct Regulations, the person conducting the meeting must, where reasonably practicable, agree a date and time for the meeting with the officer concerned. Where a date and time are not agreed the person conducting the meeting must specify a date and time. Where the officer, or their police friend, is not able to attend and proposes an alternative date or time, within 5 working days beginning with first working day after the date previously specified, the meeting must be postponed to that date or time. A meeting may take place if the police officer fails to attend.

10.33 In cases where the officer concerned is absent (for example through illness or injury) a short delay may be reasonable to allow them to attend. If this is not possible or any delay is not considered appropriate in the circumstances then the persons conducting the meeting may allow the officer to participate by telephone or video link, see **Regulation 37** of the Conduct Regulations. In these circumstances a police friend will always be permitted to attend the meeting (in person or also by telephone or video link) to represent the officer in the normal way.

10.34 If an 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.

CONDUCT OF THE MEETING

10.35 The misconduct meeting will be held in private. It will be for the persons conducting the meeting to determine the course of the meeting in accordance with the principles of natural justice and fairness.

10.36 The persons conducting the meeting will have read the investigator's report together with any account given by the officer concerned during the investigation or when submitting their response under **Regulation 31** of the Conduct Regulations. The persons conducting the meeting will also have had the opportunity to read the relevant documents attached to the investigator's report. A record of the meeting must be taken.

10.37 Any document or other material that was not submitted in advance of the meeting by the appropriate authority or the officer concerned may still be considered at the meeting at the discretion of the persons conducting the meeting. 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. The ultimate discretion and determination as to the admissibility of any new material rests with the person conducting the meeting.

10.38 Where any such document or other material is permitted to be considered, a short adjournment may be necessary to enable the person conducting the meeting,

the appropriate authority or officer concerned, as the case may be, to read or consider the document or other material and consider its implications.

10.39 Material that will be allowed, although not submitted in advance, will include mitigation where the officer concerned denied the alleged misconduct but the persons conducting the meeting found that the conduct had amounted to misconduct and are to decide on outcome.

10.40 Where there is evidence at the meeting that the officer concerned, at any time after being given written notice under **Regulation 17** of the Conduct Regulations (or **Regulation 17** of the Complaints Regulations), failed to mention when interviewed or when making representations to the investigator under **Regulation 18** of the Conduct Regulations or when responding under **Regulation 31** of the Conduct Regulations, or providing information under **Regulation 20** of the Complaints Regulations, any fact relied on in their defence at the meeting, being a fact which, in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when questioned or providing a written response, the person conducting the meeting may draw such inferences from this failure as appear appropriate, as per **Regulation 41(12) and (14)** of the Conduct Regulations.

CONSIDERATION OF OUTCOME

10.41 The persons conducting the misconduct meeting will consider the facts of the case and will decide (on the balance of probabilities) whether the officer's conduct amounted to misconduct or not. Where proceedings are conducted by a panel any decision shall be based on a majority. Where the persons conducting the meeting find that the conduct of the officer amounts to neither gross misconduct nor misconduct, they must decide whether to refer the matter to be dealt with under the Reflective Practice Review Process or that no further action be taken – see **Regulation 42** of the Conduct Regulations.

10.42 If the meeting decides that the officer's conduct did not amount to misconduct and no further action is taken, the person conducting or chairing the meeting must, before the end of a period of 5 working days, beginning with the first working day after the completion of the meeting, submit a report to the appropriate authority, setting out the findings. The appropriate authority must inform the officer concerned as soon as practicable thereafter and no entry will be made on their personal record. This is set out in **Regulation 43(1) and (2)** of the Conduct Regulations.

10.43 If the persons conducting the misconduct meeting find that the officer's conduct did fail to meet the Standards of Professional Behaviour in a way that justifies disciplinary action, then the persons conducting the meeting will determine the most appropriate outcome, with reference to **Regulation 42** of the Conduct Regulations.

10.44 In considering the question of outcome the persons conducting the meeting should consider and have due regard to the College of Policing's Guidance on Outcomes in Police Misconduct Proceedings. They will also need to take into account any previous written warnings that were live at the time of the severity assessment under **Regulation 14** of the Conduct Regulations (or at the time of the severity assessment under **Regulation 16** of the Complaints Regulations), 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. The persons conducting the meeting may (only if deemed necessary and at discretion of the person conducting the meeting) receive evidence from any witness whose evidence would in their opinion assist them in this regard.

10.45 The persons conducting the meeting are also entitled to take account of any early admission of the conduct on behalf of the officer concerned and attach whatever weight to this as they consider appropriate in the circumstances of the case.

10.46 In addition, the officer concerned and their police friend will be given the opportunity to make representations on the question of the most appropriate outcome of the case.

10.47 When circumstances which mitigate against misconduct are only mentioned late in the meeting by the officer concerned it could preclude earlier interventions which might have proved to be more positive in terms of outcome. For example, earlier interventions might potentially have introduced lower level interventions including additional supervision, management steps or the use of the Reflective Practice Review Process that avoid the misconduct process altogether.

10.48 There are existing opportunities for officers subject to disciplinary proceedings to present mitigating circumstances prior to the proceedings: in **Regulation 31(2)(b)** of the Conduct Regulations- on receipt of notice of proceedings - the officer can provide a written submission that includes any mitigation where the officer accepts that their conduct amounts to misconduct or gross misconduct.

10.49 If the opportunities outlined above have not been taken, under **Regulation 42(14)(c),** the person conducting the meeting can place less weight on mitigation that is presented only late in the proceedings where they consider that the circumstances could have been mentioned at an earlier stage.

OUTCOMES OF MISCONDUCT MEETINGS AND EXPIRY OF WARNINGS

10.50 Before informing the officer of the outcome of the misconduct meeting, the person conducting the meeting will summarise the case and set out the reasons for the outcome they are about to make and record. Where the person conducting the meeting records a finding that the conduct of the officer concerned amounted to misconduct, disciplinary action will follow and the person conducting the meeting will impose one of the following outcomes:

a) written warning,

b) final written warning.

10.51 A written warning cannot be imposed if the officer concerned had a live written warning in force at the time the severity assessment was made. A written warning or a final written warning cannot be imposed if the officer concerned had a live final written warning at the time the severity assessment was made – see **Regulation 42(7) and (8)** of the Conduct Regulations. Written warnings will remain in force for 18 months and final written warnings will remain in force for 2 years, as set out in **Regulation 42(9)** of the Conduct Regulations.

10.52 The warning will be put on the officer's personal file and will remain live for the period stipulated by the meeting from the date the warning is given. This means in the case of a written warning that any misconduct in that period is likely to lead to (at least) a final written warning. Where final written warning is issued, the officer should be told that any future misconduct may result in dismissal.

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

10.54 Where an 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.

10.55 Where a police officer who has a live written warning or final written warning takes a career break in accordance with Police Regulations 2003 then any time on such a break will not count towards the length the warning is held on record.

NOTIFICATION OF OUTCOME

10.56 The officer will be notified, by the person conducting the meeting, in accordance with **Regulation 43** of the Conduct Regulations, of:

a) the findings of the misconduct meeting (i.e. whether the conduct amounted to misconduct or not),

b) the reasons for that finding,

c) any disciplinary action imposed,

d) any direction that the matter be dealt with under the Reflective Practice Review Process.

10.57 This report must be sent by the person conducting the meeting, before the end of 5 working days after the conclusion of the misconduct meeting, to the appropriate authority. The appropriate authority must, as soon as practicable after receiving such a report, notify the officer concerned of the outcome by sending a copy of the report and the notice the right of appeal, including the name of the person to whom an appeal must be sent.

10.58 Where the Director General was entitled to make representations under **Regulation 38(1)** of the Conduct Regulations, the appropriate authority must send them a copy of this report. In cases involving a complainant or interested person, the appropriate authority will be responsible for informing any complainant and any interested person of the outcome, including the fact and outcome of any appeal against the outcome.

10.59 The appropriate authority should use the report on the outcome of the meeting and the comments made by the person conducting the meeting in consideration of any useful organisational learning which can be identified from the process.

APPEALS

10.60 The officer has the right to appeal against the finding of the misconduct meeting or against the sanction imposed and they must be informed of this right when notified of the outcome. Where the officer concerned is a senior officer the right of appeal is to a Police Appeals Tribunal. Where the officer concerned is not a senior officer, the right of appeal is under **Regulation 45** of the Conduct Regulations and the grounds for appeals are set out in **Regulation 45(2)** of the Conduct Regulations. Notice of appeal, under **Regulation 45,** must be given to the appropriate authority before the end of 7 working days following the notification of outcome, under **Regulation 43**.

10.61 Where an appeal is granted for a non-senior officer it will be held through an appeal meeting conducted under **Regulation 46** of the Conduct Regulations. A senior officer's appeal from a misconduct meeting will be conducted through a Police Appeals Tribunal.

SECTION 3: DISCIPLINARY PROCESSES AND PROCEEDINGS

CHAPTER 11: MISCONDUCT HEARINGS

SYNOPSIS AND OVERVIEW
THIS CHAPTER RELATES TO:

The process for referring to and arranging misconduct hearings, how they are conducted, the role of the chair and the possible outcomes.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Introduction
- Equality Act considerations in hearings
- Public hearings
- Regional hearings
- Presentation by the Director General
- How the chairs of misconduct hearings are appointed
- The chair's role in the hearing process
- The appropriate authority's role in the hearing process
- The time limit for hearing procedures
- Procedure for referral of officer to proceedings
- Supply of documents and witnesses to the chair of the hearing
- Witnesses
- The misconduct pre-hearing
- Holding a misconduct hearing without a pre-hearing
- Notice of proceedings and other members of the panel
- Restrictions for misconduct hearings, public notification and attendance
- How a hearing will be conducted
- Reviewing the facts of the case and deciding on outcome
- Outcomes at a misconduct hearing
- Written warnings
- Multiple findings of misconduct
- Reduction in rank
- Dismissal
- Mitigation
- Report of the outcome
- Appeals

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Any officer who is involved in a misconduct hearing,
- Legally Qualified Chairs,
- Misconduct hearing panel members,
- Police Friend representing an officer,
- Appropriate authorities,
- Professional Standards Departments,
- Legal representation for appropriate authorities or officer concerned,
- IOPC staff

INTRODUCTION

11.1 This chapter relates to misconduct hearings. It should be read by the officer concerned (and those who are supporting them), the appropriate authority, the legally qualified chair and all other parties to the hearing. It guides them through the hearing procedures and outlines their responsibilities, including the timely supply of documents. It sets out the roles and responsibilities of the legally qualified chair and the appropriate authority and the circumstances in which hearings might be conducted jointly, regionally or where cases can be presented by the Director General of the Independent Office for Police Conduct (IOPC). It discusses the purpose and conduct of a pre-hearing, the sanctions that are available at the hearing and the notifications of outcomes and appeals.

EQUALITY ACT CONSIDERATIONS IN HEARINGS

11.2 The disciplinary process should appropriately accommodate officers with disabilities to ensure that the process is as fair as possible. This may include making reasonable adjustments – see the duty at sections 20 and 21 of the Equality Act 2010. The officer concerned – where they consider they have a disability – should inform the appropriate authority as early in the process as possible.

11.3 Particular reference should be given to the admission of medical evidence and the chair should ensure that any assertion of disability is explored by way of such evidence.

11.4 Any medical expert whose evidence is used should be available to attend the misconduct hearing to be questioned on the contents of their report and on their opinion. Such a report should give details of their qualifications, any other material or documentation relied on in the report, a summary of all the material facts, and express the conclusions reached by the expert. Where an expert has been requested by the chair to give evidence as a witness in the hearing, the chair may put any questions to the expert regarding clarification or evidence of their view.

11.5 The misconduct hearing panel should have up to date equal opportunities training and be aware of the sensitivities which may be felt by those with certain protected characteristics. The panel should not act in such a way as to give rise to a complaint of harassment.

11.6 On top of this, the process should address the issue that not all disabilities can be accommodated within every job in policing – refer to s15 of the Equality Act 2010. The decisions which the panel make regarding disciplinary outcomes should be proportionate to achieving the aim of maintaining public confidence in the police and upholding high professional standards.

PUBLIC HEARINGS

11.7 The presumption is that misconduct hearings must be held in public (**Regulation 39** of the Conduct Regulations) and open to the public and the media to attend. This is in keeping with a general principle that discipline proceedings should be as open, transparent and fair as possible for both the public and parties to the procedures. Restrictions on attendance should be the exception.

REGIONAL HEARINGS

11.8 Where considered appropriate, the administration of the hearing can be delegated to another police force under **Regulation 26** of the Conduct Regulations which will allow for 'regional hearings' to be held.

11.9 Where the hearing has been delegated to another police force, responses to notices and the supply of documents to parties to the hearing must be supplied to

both the originating authority and the delegated authority. **Regulation 26** of the Conduct Regulations specifies that where functions are delegated, the requirement to supply documents applies to both the appropriate authority and the originating authority.

11.10 The regulations which follow set out which functions within these provisions should be undertaken by the originating authority (i.e. the original police force of which the officer concerned is a member) and which should be undertaken by the appropriate authority (i.e. the delegated force). The appropriate authority largely has administrative functions in relation to the hearing, while the originating authority retains the functions relating to making representations, publishing information and making their case at the misconduct hearing itself.

PRESENTATION BY THE DIRECTOR GENERAL

11.11 The Director General has discretion to decide to present a case at a misconduct hearing following a report from a directed investigation or investigation conducted by the Director General (Independent Investigation) and where the Director General has directed that the form of disciplinary proceeding that should be taken is a misconduct hearing (or accelerated misconduct hearing) under **paragraph 23(5A)** of Schedule 3 to the 2002 Act – see **Regulation 24** of the Conduct Regulations.

11.12 The Director General also has discretion to decide to present in cases following a report from a local investigation under **paragraph 16** of Schedule 3 to the 2002 Act where the Director General has directed a misconduct hearing (or accelerated hearing) under **paragraph 27(4)(b)** of Schedule 3.

11.13 In accordance with the governance arrangements set out in the 2002 Act, the Director General can delegate this duty (as with other duties) to a person or persons acting on their behalf.

11.14 **Regulation 24** of the Conduct Regulations sets out the conditions, one of which needs to be met for the Director General to make a decision to present a case at a misconduct hearing or accelerated misconduct hearing:

a) the appropriate authority disagreed with the Director General as to whether there is a case to answer when its views were sought under **paragraph 23(5A)(a)(i)** of Schedule 3 (directed and independent investigations),
OR
b) the appropriate authority under **paragraph 25(4D)(a)** of Schedule 3 did not accept the recommendation of the Director General as to whether there is a case to answer (local investigations),
OR
c) that the appropriate authority and the Director General agree that the Director General should present the case,
OR
d) the Director General is of the view that there is compelling public interest for the Director General to present the case.

11.15 The Director General may also present a case following a directed or independent investigation where the case is referred to an accelerated misconduct hearing and the appropriate authority and the Director General disagree as to whether the case should be certified for the accelerated procedure, as under **Regulation 24(4)** of the Conduct Regulations.

11.16 The Director General makes a decision at their discretion as to whether to present a case at misconduct hearing in these circumstances.

When and how should the Director General (or person acting on their behalf) notify the appropriate authority that the Director General has decided to present the case?

11.17 **Where (a) above applies:** the Regulations do not specify timings, but legally, the Director General cannot formally make this decision until after he/she has directed the appropriate authority to bring proceedings and after the appropriate authority has referred the case to a misconduct hearing.

11.18 In practice, it is expected that the Director General and the appropriate authority will communicate informally and discuss options or preferences before the final decision is reached and communicated. As such, areas of disagreement may be clear, even before the appropriate authority has given its views, if any, on the investigation report. The Director General must of course be careful not to pre-empt or fetter discretion by pre-empting such views. The Director General should therefore formally make the decision to present after the decision to direct the case to a misconduct hearing.

11.19 The notification should be sent promptly and in writing including by electronic means where convenient and practical. In practice the decision to present can be sent simultaneously at the same time as the notification of the decision to direct, where appropriate.

11.20 The Director General's notification of the decision to present should set out the reasons for this decision to present. The Director General should also provide appropriate draft text / input on the wording of the content of the **Regulation 30** notice to the officer or officers who are subject to misconduct proceedings, specifically – as at **Regulation 30(1)(a)(ii)** - the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct. The timing of such drafting will be dependent on the case in question, if available at the point that the decision to present is communicated, it can be provided at this stage, or later if doing so would delay communication. In any event, the Director General should advise how they intend to provide input to the Regulation 30 notice.

11.21 **Where (b) above applies:** as with the (a) scenario, the Director General must formally make the decision **after** the decision to direct proceedings. As with (a) the notification should be in writing and give an explanation as to why.

11.22 **Where (c) and (d) above applies:** the appropriate authority may make representations to the Director General at any time and in the context of informal communications. The power to make the decision to present does not arise until the appropriate authority has referred the case to a misconduct hearing. But, in practice, any request or agreement between the Director General and the appropriate authority can be made at any point before referral to misconduct proceedings is communicated to the officer in accordance with Regulation 30.

Joint misconduct proceedings

11.23 After the direction from the Director General that the case or cases must be referred to misconduct proceedings and/or the decision of the Director General to present a case or cases, and before the **Regulation 30** notice is sent, a decision must be made as to whether to refer the cases to a joint hearing. In accordance with **Regulation 25(7)** where the Director General has decided to present a case, the case and the officer concerned may only be referred to joint proceedings on the direction of the Director General, having consulted with the appropriate authority. This allows the Director General to separate a specific case where there are

multiple allegations or multiple officers involved. In most cases, (irrespective of who is responsible for presenting the case) cases arising from the same matter or incident should be the subject of joint hearings.

11.24 There may be circumstances where the complex nature of inextricably linked cases involving multiple individuals means that it is not appropriate to conduct separate proceedings. In such cases it will be for the Director General and the appropriate authority to determine and agree who is best placed to present the hearing by agreement in accordance with the provisions of **Regulation 24**.

11.25 The Director General will need to have regard to considerations set out in Chapter 9 before making the decision that a case or particular cases arising from the same matter or incident should not go forward to joint proceedings. In cases where the Director General has not exercised the power to direct joint proceedings, reasons should be given.

11.26 Where there are multiple officers and allegations which involve some disagreement and some agreement on the determinations between the Director General and the appropriate authority, both parties should seek to work collaboratively to discuss how best a case should be handled and presented and by whom.

11.27 Where a decision that the Director General will present has been made, the appropriate authority retains its responsibility for the management and administration of the proceedings (aside from the chair's management of the hearing role) – it is the appropriate authority who is taking proceedings for misconduct against their officer and who will take the necessary action prior to the hearing and following the outcome in consultation with the Director General. For further clarification, a summary of the duties and decisions and who is responsible for what is set out in the table below.

CASES WHERE THE DIRECTOR GENERAL IS PRESENTING A CASE: SUMMARY OF KEY DECISIONS AND DUTIES FOR THE DIRECTOR GENERAL AND THE APPROPRIATE AUTHORITY

Decision or duty	Who	Legislative reference	When	Notes
Decision on whether to present the case	Director General	Regulation 24 (Conduct Regulations)	Formally: after referral of case to misconduct proceedings	Open to the AA to request or seek agreement that the Director General should present
Referral of case to misconduct proceedings	AA (on direction of the Director General in some circumstances)	Regulation 23 (Conduct Regulations) Schedule 3, 2002 Act Regulation 49 (accelerated procedure, Conduct Regulations)	Following investigation report, following direction from the Director General	
Decision to hold joint misconduct proceedings	Director General directs joint misconduct hearing on consultation with the AA	Regulation 25 (Conduct Regulations)	After decision to refer for all officers	
Notice of referral to misconduct proceedings	AA is responsible for the overall content and for sending this notice, (and also for copying it to the Director General). In addition:	Regulation 30 (Conduct Regulations)		
	AA must consult the Director General and the Director General may give direction as	Regulation 30(1)(a)(ii)		

	to the wording on the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct	Regulation 30 (10) (Conduct Regulations)		
	AA must consult the Director General and Director General may give direction as to the provision of documents	Regulation 30 (1)(c) and (10) (Conduct Regulations)		
Witnesses and documents to be supplied	Director General not the AA has the duty to supply lists of witnesses and documents/notices to the LQC	Regulation 32(13)		Director General prepares case bundle and relevant number of copies
Notice of misconduct proceedings and panel	AA must copy to Director General	Regulation 35(11)		

11.28 The process and steps to be followed in cases where the Director General is presenting the case are set out in the box below:

Action		Regulation	
1A. IOPC carries out independent investigation or the appropriate authority carries out a directed investigation	1B. The appropriate authority carries out a 'local investigation'	Under paragraph 18 or 19 of Schedule 3	Under paragraph 16 of Schedule 3
2A. IOPC's investigation report is produced and sent to the appropriate authority with a written statement from the Director General explaining their opinion on whether there is a case to answer for misconduct or gross misconduct and whether or not disciplinary proceedings should be brought	2B. The complainant seeks a review of that investigation	Regulation 27 of the Complaints Regulations Paragraph 23 of Schedule 3	Schedule 3 para 23
3A. Director General takes action in response to the report	3B. The Director General made a recommendation to the appropriate authority that the officer has a case to answer in misconduct or gross misconduct	Schedule 3 para 23	Schedule 3 para 25(4C)(c)(i)
4A. Appropriate authority asked for views	4B. The appropriate authority notified the Director General that it did not accept the Director General's recommendation	Schedule 3 para 23(5A)(a)	Schedule 3 para 25(4D)
5A. Director General considers appropriate authority views and issues final determination on disciplinary proceedings. AA views differ from those of the Director General on the form of misconduct proceedings Director General directs the appropriate authority to bring proceedings	5B. The Director General directs the AA to bring misconduct proceedings	Schedule 3 para 23(5A)(b) Schedule 3 para 23(5A)(e)	Schedule 3 para 25A(3) & para 27
6. AA refers case to misconduct proceedings		Regulation 23(9) of the Conduct Regulations	
7. The Director General formally notifies the AA if the Director General has decided to present the case (and should do so promptly in writing). At this point the Director General may wish to give input on the wording of the content of the Regulation 30 notice,		Regulation 24(5) of the Conduct Regulations and statutory guidance	

specifically – as at Regulation 30(1)(a)(ii) - the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct	
8. The AA consults and the Director General agrees or disagrees with joint proceedings (i.e. two or more cases arising from the same matter or incident, relating to more than one police officer)	Regulation 25(7) of the Conduct Regulations
9. AA's role (where the Director General is presenting). In addition to the above, the AA must give the Director General any assistance the Director General reasonably requires. See table above. The AA continues to retain 'ownership' of proceedings and the presumption will be that the AA will carry out any administrative tasks associated with arrangements for the hearing unless otherwise agreed. These tasks will include (but not exclusively): a) liaising with local policing body on chair of the hearing, b) serving notices, c) notifying and summonsing witnesses (if required, as directed) d) agreeing and arranging venue and notifying relevant parties, e) supporting witnesses, f) forwarding representations to the chair, g) making arrangements for public attendance and h) all responsibility for the venue for the hearing including security and i) including the provision of equipment and stationary required during the hearing.	Regulation 24 (6) of the Conduct Regulations
10. AA must consult the Director General on the contents of the Regulation 30 notice to the officer and comply with directions	Regulation 30(10) of the Conduct Regulations
11. The officer concerned must copy the Regulation 31 documents and list of witnesses to the Director General	Regulation 31(5) of the Conduct Regulations
12.The Director General must supply the chair of the misconduct hearing with the specified notices, documents and list of witnesses	Regulation 32(13) of the Conduct Regulations
13. The appropriate authority informs the Director General of the date, time and place of the hearing and members of the panel (other than the chair)	Regulation 35(11) of the Conduct Regulations
14.The Director General addresses the proceedings, outlines the case, sums up and makes representations at the hearing	Regulation 41(18) of the Conduct Regulations

11.29 In cases where the Director General is presenting, the appropriate authority retains ownership of and the role in administering arrangements for the hearing including the issue of Regulation notices. The division of responsibilities under the Regulations is set out at the tables after paragraph 11.27 above. In addition, under **Regulation 24(6),** the appropriate authority must give the Director General (or persons acting on their behalf), any assistance that the Director General reasonably requires for the purpose of presenting a case. The appropriate authority provides the venue, necessary equipment and administrative arrangements The Director General will produce their own documentation and "bundles" associated with the presentation of the case. However, the presumption is that other duties, including all arrangements for the hearing will fall to the appropriate authority. See the table at paragraph 11.27. Under the Regulations, the appropriate authority is required to consult with the Director General about the contents of the written notices – specifically those to be given under **Regulation 30** of the Conduct Regulations and the officer must provide the Director General with a copy of the documents provided by way of response to the appropriate authority under **Regulation 31**. The supply of

any lists of witnesses to the legally-qualified chair is the responsibility of the Director General.

11.30 It is best practice for the Director General to prepare the draft content for inclusion in the notice for the purposes of **Regulation 30(1)(a)(ii)** setting out the grounds on which the officer is being referred to the misconduct hearing for discussion in consultation with the appropriate authority. Ultimately the Director General retains the power to direct the contents of the **Regulation 30** notice in respect of the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct.

11.31 Where the Director General has decided to present the case, the appropriate authority must consult the Director General about the written notice to the officer (the **Regulation 30** notice) and comply with any directions that the Director General wishes to give in relation to the content of the **Regulation 30** notice and the provision of documents.

11.32 Where the decision to present a case has been made by the Director General of the IOPC, the costs of presenting the case fall to the IOPC. Where the appropriate authority requests that the IOPC present and both agree that the IOPC should present the case, the IOPC should be able to recover all reasonable costs of presenting from the appropriate authority.

11.33 Where the Director General is responsible for presenting the case, this guidance concerning the preparation of the case in advance of the hearing should be followed by the Director General or a person appointed to present on their behalf.

11.34 Where the Director General presents the case, they may be represented by a relevant lawyer, in accordance with the Regulations, as set out in **Regulation 8(9)** of the Conduct Regulations.

HOW THE CHAIRS OF MISCONDUCT HEARINGS ARE APPOINTED

11.35 The misconduct hearing will be chaired by an independent legally qualified person who will be chosen from a pool held by the local policing body. They will be appointed at the point where the appropriate authority determines (under **Regulation 23**) to refer the case to misconduct hearing, at which stage they will ask for a legally qualified person to be appointed by the local policing body (under **Regulation 28**).

11.36 Appointment should be on a fair and transparent basis by the local policing body following a request from the appropriate authority. Fair and transparent will generally mean that a rota system is established (sometimes referred to as ‘first cab off the rank system’) so the next available person from the pool is chosen for the hearing. It is good practice for the local policing body to publish how their rota system operates.

11.37 In appointing the legally-qualified chair, the local policing body should liaise with the chair regarding the appropriate authority’s provisional time frames. Once appointed to sit in proceedings as the chair, the legally-qualified chair should regard themselves as committed to undertake this role. If, for any reason following appointment of the chair, the proceedings have to be postponed, the local policing body should liaise with the chair to find a suitable time when the chair is able to sit.

11.38 Where it is necessary, during the hearing process, for the appropriate authority to communicate with the chair, with respect to administrative matters etc, the person communicating on behalf of the appropriate authority should not have been involved

in the investigation. It is good practice for the appropriate authority to nominate an individual to communicate with the chair who is independent of the investigation process.

11.39 The officer must be informed by the appropriate authority as soon as practicable of the person selected to chair their misconduct hearing and to whom they may object in writing before the end of 3 working days, beginning with the first working day after the officer is given notice of the person's name, setting out their grounds for objection – see **Regulation 30**. In doing so, the officer concerned must set out clear and reasonable objections as to why the chair should not chair the hearing. The appropriate authority or local policing body will either uphold or reject the objection. If the objection is upheld, a replacement must be found and the officer concerned will have the same right to object to that replacement, but not subsequent replacements.

11.40 As set out in **Regulation 28** of the Conduct Regulations, the panel must also consist of two other members (who are formally appointed later in the process once the date of the hearing has been determined):

a) an independent member i.e. a layperson who is not a police officer and is selected from a list held by the local policing body and selected on a fair and transparent basis. A "layperson" is defined in Schedule 6 of the Police Act 1996 and is a person who is not, and has never been, a member of a police force or special constable, civilian police staff, local policing body or other policing body as per the Act. The inclusion of the layperson member allows a further independent and impartial view at the hearing from outside policing and

b) 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), appointed by the appropriate authority. For senior officers this panel member should be the HMCIC or an inspector of constabulary nominated by HMCIC.

11.41 It should be noted that the chair in a senior officer hearing may be taken from the list of legally-qualified persons who ordinarily sit on misconduct hearings, or from the list of chairs for the Police Appeals Tribunal, supplied by the Home Office. It is good practice to contact both the local policing body for the lay person and the HMCIC for the nomination as early as possible in the process when the appropriate authority knows that the officer will be referred to a hearing (as early as the determination under **Regulation 23** if possible).

THE CHAIR'S ROLE IN THE HEARING PROCESS

11.42 The chair is responsible for the management of the hearing in conjunction with the appropriate authority and their administration of the hearing. The delineation of the responsibilities should be clearly outlined in the letter of appointment. In general, the chair of the hearing, in consultation with the Professional Standards Department, is responsible for:

- arranging and holding a pre-hearing where appropriate, (**Regulations 29(3) and 33**),
- setting the time, date and duration of the hearing, (**Regulation 29(4) and 33(8)**),
- determining whether to uphold any objection to joint misconduct hearings **(Regulation 25),**
- considering representations from the appropriate authority and those representing the officer concerning the witnesses who will give evidence at the hearing and making a determination on witnesses, (**Regulation 32(3)),**

- considering representations from the appropriate authority and those representing the officer concerned on any procedural or preliminary legal arguments and points of law, and making any necessary determinations,
- resolving and determining any issues relating to the provision of documents, the exclusion of persons from the hearing and any other restrictions imposed on the hearing,
- determining whether to agree applications for extensions to time limits imposed by Regulations on the timing of the hearing or the provision of documents,
- determining whether to put questions to the officer that have been requested by a complainant or interested person **(Regulation 40),**
- ensuring witnesses attend and are given the date, time and venue (**Regulation 32(5**)),
- issuing directions to either or all parties in order to facilitate timely and effective disciplinary proceedings,
- determining whether to request the appropriate authority to give public notice of the hearing (**Regulation 36**),
- notifying the appropriate authority of the outcome **(Regulation 43),**
- determining whether to request the appropriate authority to publish the report of the hearing **(Regulation 43).**

THE APPROPRIATE AUTHORITY'S ROLE IN THE HEARING PROCESS

11.43 The appropriate authority is responsible for the administration of the hearing (including where delegated to another authority) which includes:

- determining the case to answer and referral of cases to misconduct hearings (and where directed by the Director General) (**Regulation 23**),
- determining whether to refer cases to a joint misconduct hearing **(Regulation 25),**
- issuing notice of referral to hearings **(Regulation 30)** (with input from Director General in IOPC presented cases)**,**
- collating officer's response and list of witnesses (**Regulation 31**) (by the Director General in IOPC presented cases),
- providing the chair with the copies of notices and the officer concerned's response and the list of witnesses (**Regulation 32**) (by the Director General in IOPC presented cases),
- arranging the venue for the hearing and ensuring accessibility,
- issuing notice of hearings (**Regulation 35**),
- public notification of hearings, if requested by the chair (**Regulation 36**),
- ensuring, complainants and interested persons are informed of the date, time and venue (**Regulation 40**),
- notifying the officer and the Director General (where applicable) of outcome (**Regulation 43**),
- publication of the public notice on their website if requested by the chair (**Regulation 43**).

THE TIME LIMIT FOR HEARING PROCEDURES

11.44 In setting the date of the hearing, the chair must work within an overall 100 working day limit so that the hearing must begin within 100 working days from the date of the notification to the officer concerned of referral to misconduct proceedings (the **Regulation 30** notice), see **Regulation 29(2)** of the Conduct Regulations. In exceptional circumstances, the chair may extend this period of 100 working days, where they consider it necessary to do so in the interests of justice. It is important that the chair balances the demands of the arrangement of the pre-hearing and

applications for extensions to time limits made under the Regulations, within this 100 working day limit, or the extended timescale, as the case may be.

11.45 It is in the interests of all parties to the hearing that the procedures are expedited as soon as practically possible and timings set out in Regulations should be seen as the maximum time for the procedure to have taken place rather than the minimum time. It will also help to improve the timing of hearing procedures where there is agreement on the facts of the case or no dispute of the evidence and for that to be made clear at an early stage in the process. The panel should look favourably on any early admittance to any part of the allegations by the officer concerned.

11.46 Any delays or attempts to cause delays by either party that are considered to be unreasonable by the person chairing proceedings or where there is a failure to comply with any direction issued by the chair (see **Regulation 29(1) and Regulation 41(11)** of the Conduct Regulations) may be dealt with as the chair sees fit.

PROCEDURE FOR REFERRAL OF OFFICER TO PROCEEDINGS

11.47 Where the appropriate authority or the Director General has determined that a misconduct hearing should take place, the appropriate authority will provide the officer with a notice containing the matters discussed at **Regulation 30** of the Conduct Regulations, including describing the particulars of the actual behaviour of the officer and the reasons why it is considered to amount to misconduct or gross misconduct.

11.48 The officer concerned must, subject to the harm test, be given a copy of the investigation report (or the part of the report which relates to them), and any other documents which might reasonably be considered capable of undermining or assisting the case. The officer concerned must also be given a copy of any statement they made to the investigator. The investigator's schedule of material should also be attached, suitably redacted. These documents must be supplied to the officer as soon as practicable after the decision has been made to refer the matter to a hearing.

11.49 As set out in **Regulation 31,** within 15 working days (unless this period is extended by the chair of the misconduct 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 **Regulation 30**, the officer will be required to submit in writing:

a) whether or not they accept that the behaviour described in the notice amounts to misconduct or gross misconduct as the case may be,

b) where the officer accepts that their conduct amounts to misconduct or gross misconduct as the case may be, any written submission they wish to make in mitigation,

c) where they do not accept that their conduct amounts to misconduct or gross misconduct as the case may be, or they dispute part of the case, written notice of the particulars of the allegations they dispute and their account of the relevant events and any arguments on points of law they wish the chair to consider.

11.50 The officer concerned's response to the **Regulation 30** notice is critical to gathering the evidence needed for presentation at the hearing and understanding the officer's position. It is an important opportunity for the officer to put across their

side of the case before the hearing and officers will be encouraged and supported by their police friend to give a full response.

11.51 The officer concerned will also (within the same time limit) provide the appropriate authority with a copy of any document they intend to rely on at the misconduct hearing. Where the Director General has decided to present the case, the officer concerned must copy all the documents to them. The officer concerned should set out:

a) any representations they have as to redactions that should be made to the documents given to the officer concerned under **Regulation 30(1)** before they are supplied to the panel on the grounds that they amount to inadmissible material. For the purposes of this paragraph, inadmissible material means material that would cause the officer concerned unfair material prejudice if it were considered by the misconduct hearing panel as part of their determinations. For the avoidance of doubt, the investigator's opinion as to whether or not conduct amounts to misconduct, gross misconduct or neither is not admissible material,

b) any representations they have as to any redactions made by the appropriate authority to those documents,

c) any other representations they have with respect to outstanding matters of disclosure.

SUPPLY OF DOCUMENTS AND WITNESSES TO THE CHAIR OF THE HEARING

11.52 Following receipt of the officer's response to the **Regulation 30** notice, the appropriate authority must supply the chair of the hearing with the documents the officer provided under **Regulation 31** and the documents given to the officer under **Regulation 30(1)** and under **Regulation 32(6)(c)** (any other documents that, in the opinion of the appropriate authority should be considered at the misconduct hearing in cases where the officer concerned does not accept that their conduct amounts to misconduct or gross misconduct, or where the officer disputes any part of the case (e.g. further documents gathered by the appropriate authority in response to an assertion made by the officer concerned in the **Regulation 30** response)). These documents are collectively known as 'the bundle'. As per **Regulation 32(6),** the bundle must be supplied before the end of 10 working days, beginning with the first working day after the date on which the officer concerned has complied with **Regulation 31(2),** and allow the chair to consider the bundle alongside the list of witnesses and determine which should attend the misconduct hearing.

11.53 Before supplying the bundle to the chair, the appropriate authority should consider any representations made by the officer with respect to documents together with their **Regulation 30** response, or subsequently with respect to documents that the appropriate authority proposes to include in the hearing bundle under **Regulation 32(6)(c)** and seek to reach agreement with the officer. The decision as to what to include in the hearing bundle to be sent to the chair is ultimately for the appropriate authority. The appropriate authority must ensure that the investigator's report and other documents to be supplied to the chair do not contain inadmissible material.

11.54 Any disputes as to the contents of the bundle (including as to redactions) or disclosure should be resolved by the chair. It may be necessary for these matters to be dealt with at a misconduct pre-hearing. At a misconduct pre-hearing, the chair must consider and may issue directions with respect to any issues related to disclosure of documents for the purposes of the misconduct hearing. Where the

chair has considered material which either party argues is inadmissible, whether for the purposes of making a decision on admissibility or inadvertently, the chair and the panel should consider whether they can put such material out of their mind. This is very often possible. However, they should have in mind the legal framework around bias and should recuse themselves from hearing the case, where the legal framework requires them to do so.

11.55 Early sight of the bundle will support the effective running of the hearing and the discussions at the pre-hearing which support that procedure. The appropriate authority can apply for an extension of the 10 working day period for the supply of the bundle to the chair under **Regulation 32(9)** of the Conduct Regulations. This may be appropriate where there are substantial and significant reasons for delay. For example, where the case is particularly complex – possibly involving multiple officers or where there are significant amounts of evidence to be gone through such as CCTV evidence and the case requires substantial documentation. The chair can decide to extend the period based on the reasons given and their overall management of the hearing procedure under the 100 working day time limitation.

11.56 It is worth noting that where the Director General has decided to present the case, they have a broad range of duties, including the duty to provide the chair with the list of witnesses or notices.

WITNESSES

11.57 Witnesses are an important element of the hearing where the chair accepts that they are material to the allegation and their attendance is necessary to resolve disputed issues in the case. **Regulation 31(4)** sets out the process whereby the officer concerned and appropriate authority share, and if possible, agree the list of proposed witnesses. This list is then shared with the chair under **Regulation 32(1)** by the appropriate authority, within 10 working days, beginning with the first working day after the parties supplied the notices under **Regulation 31(4).** This timescale may be extended where it appears to the chair necessary to do so.

11.58 The chair of the misconduct hearing is responsible, under **Regulation 32(5)** of the Conduct Regulations for giving the witnesses notice of the date, time and place of the hearing and, where the witness is a police officer, causing them to be ordered to attend. In practice, the appropriate authority, or Director General, is responsible for arranging the attendance of witnesses, including obtaining and serving witness summonses, if required. A witness will therefore only be required to attend a hearing where the chair has determined that it is necessary. This will be discussed at any pre-hearing after which the chair will make a determination.

11.59 Where the chair of a misconduct hearing rejects the request for a particular witness to attend, it is good practice for the reasons for refusing to allow the attendance to be given to the officer concerned and the appropriate authority or the Director General.

11.60 It is important that the welfare of the witness should be considered by the appropriate authority, or the Director General as the case may be: they will be responsible for arranging their attendance and they should meet the reasonable expenses of any witnesses. In general terms, the hearing must recognise the individual needs and concerns of witnesses and treat them with dignity and respect. This may include completing a risk assessment on the impact of appearing at a misconduct hearing for a witness, given the responsibility which the appropriate authority, or Director General, has to the witness.

11.61 Particular care should be taken where cases involve individuals who are vulnerable or where the case is one of a sensitive nature which is likely to cause anxiety and stress for the individual involved. In these circumstances, every effort should be taken to provide the necessary support and adjustments to the individual to support their attending and participation in the misconduct proceedings.

11.62 The appropriate authority, or the Director General should make the chair aware of any needs of the witness and whether to allow for measures for certain groups of witnesses who may be vulnerable or feel intimidated. This could include giving evidence behind a screen or by video link.

THE MISCONDUCT PRE-HEARING

11.63 In most cases, the chair appointed to the case would hold a pre-hearing. The chair must make a decision on whether to hold a pre-hearing within 5 working days, beginning with the first working day after documents were supplied to the chair under **Regulation 32(6).** This time period cannot be extended.

11.64 The purpose of a misconduct pre-hearing is to support the chair of the misconduct hearing in deciding on several issues that will support the effective running of the full hearing. Those issues are set out in **Regulation 33** and include:

a) considering any lists of proposed witnesses and determining which, if any, witnesses should attend the hearing. In general, a witness should be material to the allegation and help clarify evidence that is in dispute. At the misconduct pre-hearing there will be the opportunity for all sides to give brief details of the evidence that their witness can provide and reach agreement on which witnesses are necessary to deal with the issues in dispute. The appropriate authority should agree to meet the reasonable expenses of any witnesses,

b) considering any documents supplied under **Regulation 32(6)** of the Conduct Regulations,

c) considering any procedural or preliminary legal arguments and points of law, and making any necessary determinations which can be made prior to the commencement of the hearing,

d) resolving and determining any issues relating to the provision of documents,

e) discussing restrictions imposed on the hearing or the publication of documents, the exclusion of persons from the hearing and any representations on whether all or any part of the hearing should be in private,

f) setting the date, time and duration of the hearing, in consultation with the appropriate authority, officer concerned and representatives and the Director General, where the Director General is presenting the case.

11.65 The misconduct pre-hearing must be arranged within a period of 15 working days, beginning with the first working day after the day on which the documents have been supplied to the chair under **Regulation 32(6).** The chair is able to extend this 15 working day period, where they consider it in the interests of justice to do so. Where the officer or their police friend is unable to attend at the time specified by the chair, they must propose an alternative date and time for the pre-hearing which

must be within 5 working days, beginning with the first working day after the day specified by the chair.

11.66 Participants to the pre-hearing will be:

a) the chair of the hearing,
b) the officer concerned,
c) the police friend and/or relevant lawyer,
d) the appropriate authority and/or their legal representative,
e) where the Director General is presenting the case or would be entitled to attend the misconduct hearing under **Regulation 38(1),** the Director General and/or their legal representative has the right to attend.

11.67 A misconduct pre-hearing must be held in private. It does not have to be conducted face to face: the parties to the pre-hearing can decide on the best form of communication which may be a telephone conference or other electronic means. The chair will be the final arbiter where there is disagreement on those means. A verbatim record of the pre-hearing does not need to be kept. The chair will record all determinations and decisions and may issue directions on matters that were discussed, including the imposition of additional deadlines or time limits which must be followed by the participants. A summary of the key matters discussed and a record of any directions issued must be served on the parties by the chair within 5 working days of the pre-hearing. Officers should not be asked questions at a pre-hearing.

11.68 In deciding the time and date of the hearing itself, the hearing must take place before the end of 30 working days from the date of the pre-hearing. Any of the parties to the pre-hearing can apply to the chair for an extension to that period. The chair must decide whether to grant that extension based on the reasons given, and in the interests of justice, noting the overall limitation of 100 working days for the hearing to begin from the date of the **Regulation 30** notice, or its extended timescale. The chair may also determine themselves that the 30 working day timescale should be extended in the interests of justice and extend this period, under **Regulation 33(10).**

HOLDING A MISCONDUCT HEARING WITHOUT A PRE-HEARING

11.69 In some cases, a pre-hearing will not be necessary. For example, where there is no need to discuss witnesses, documents provided or skeleton arguments. In these cases the chair will need to agree the date, time and duration of the hearing through consultation with the parties by telephone or electronic communication, keeping in mind the overall 100 working day time limit, or the agreed extended period. Where the parties fail to agree, the chair will decide – see **Regulation 29(4) and (5)** of the Conduct Regulations.

11.70 Where the chair decides that a pre-hearing is not appropriate, the misconduct hearing must take place within 30 working days, or an extended period if determined to be in the interests of justice by the chair, beginning with the provision of documents to the chair under **Regulation 32(6)** of the Conduct Regulations.

NOTICE OF PROCEEDINGS AND OTHER MEMBERS OF THE PANEL

11.71 Following the pre-hearing and/or the determination of the date and time of the misconduct hearing (**Regulation 33**), the appropriate authority must give the officer concerned written notice of the date, time and place of the hearing (**Regulation 35**). The officer must also be notified of the other members of the panel (in addition to the chair). The officer may object to either or both of these people in writing to the chair within 3 working days of being notified and it is the chair who will notify in

writing whether the objection is upheld or rejected and who will replace them where upheld. The officer can also object a second time to the proposed appointment of other panel members and again the chair will adjudicate on that objection.

11.72 Where the appropriate authority has delegated authority to another police force and the hearing is being held in another area, the officer must be notified of the venue for the hearing.

11.73 The notice of the time, date and place of the hearing must also be given to the Director General where they are entitled to make representations or where the Director General has decided to present the case.

RESTRICTIONS FOR MISCONDUCT HEARINGS, PUBLIC NOTIFICATION AND ATTENDANCE

11.74 The chair of the hearing may require the appropriate authority to publish information concerning the misconduct hearing on their website, as soon as practicable following the officer receiving notification of the hearing under **Regulation 35**, see **Regulation 36**. This should be done in a way that is transparent and easily accessible for the public. For example, the public should be able to navigate their way to the notice with clear signposting on the force's website. Where authority to administer the hearing has been delegated to another force it will be the responsibility for the originating force to publish the notice. The notice will contain information on one or more of the following:

a) the name of the officer concerned,
b) the date, time and place of the hearing,
c) the nature of the misconduct allegation.

11.75 There may be certain circumstances where it would not be appropriate for an officer to be named. Two such examples are 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. The welfare of the officer should also be considered, particularly where there may be a severe adverse effect on the officer's health or there are dangers or threats to the officer that might arise from being named publicly. All parties to proceedings will have the opportunity to make representations to the chair on such matters and the chair will make the final decision regarding publicly naming an officer, see **Regulation 36(3)** of the Conduct Regulations.

11.76 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 the hearing. These matters will have been discussed at the pre-hearing but the chair should consider any representations made prior to the deadline they specify before deciding whether notice of the hearing should be published, or what the content of any notice should be.

11.77 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 and on the publication of the notice in the light of those discussions.

11.78 Notices given to the public should also contain information relating to any conditions that the chair has decided to impose on attendance which have been determined at the point where the notice is required.

11.79 Where, in exceptional circumstances, a decision is taken in advance to hold all of the hearing in private, under **Regulation 39** of the Conduct Regulations, then in the interests of transparency the chair may consider that it would be appropriate to ask the appropriate authority to publish a notice on its website explaining the decision.

11.80 At the pre-hearing, the chair will have discussed with participants the reporting restrictions or exclusions from the hearing proposed by the appropriate authority or the officer concerned. This will not be a final determination but an initial position from which, following public notification, the chair will be able to take representations (see **Regulation 36(3) and (5)** of the Conduct Regulations) from:

a) the officer concerned,
b) the appropriate authority,
c) the complainant,
d) any interested person,
e) witnesses,
f) the Director General,
g) representatives of the media.

11.81 Representations can be in relation to whether any person should be excluded from the whole or part of a hearing and whether any conditions should be imposed on attendance in order to facilitate the proper conduct of the proceedings.

11.82 It is for the chair to determine the deadline by which any such representations must be made. The appropriate authority should inform any parties listed at (a)-(g) of this deadline.

11.83 Following those representations, the chair will make their determination under **Regulation 39** of the Conduct Regulations. This decision should be based on the principle that misconduct hearings should be in public. 'In public' means that the public is able to attend and the media report on the proceedings. This is in keeping with long standing traditions in courts and tribunals and any restrictions should be on the basis of strict criteria.

11.84 The chair may consider imposing some restrictions based on their assessment. In assessing whether any person should be excluded from a hearing or any part of a hearing, the chair may take into account a variety of factors. These may include but are not limited to those factors listed at (a)-(k) below.

a) the need for transparency of the police discipline and/or complaints system,
b) the public interest[28] in the proceedings and public interest in transparency thereof,
c) the vulnerability, physical and mental health and/or the welfare of witnesses who may be called to give evidence at the hearing,
d) the involvement or naming of any children,
e) where a misconduct hearing is being held as a result of a complaint, the vulnerability, physical and mental health and/or the welfare of the complainant(s),
f) the physical and mental health and/or welfare of the officer(s) subject to the misconduct hearing,

28 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.

g) the welfare of any third party not listed above, i.e. a victim that is not a complainant or witness,
h) 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,
i) whether holding a hearing in public would jeopardise or interfere with any criminal proceedings,
j) whether holding the hearing in public would interfere with the prevention or detection of crime or the apprehension of offenders,
k) any relevant national security issues.

11.85 As a general principle, wherever restrictions are needed, blanket restrictions should be avoided and careful consideration should be given to which parts of the hearing can remain open.

11.86 Having taken into account any of the factors listed at (a)-(k), any representations that have been made and any other factors they consider relevant, the chair 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.

11.87 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.

11.88 Complainants and interested persons are entitled to attend the misconduct hearing and must be informed of the date, time and place of the hearing as per **Regulation 40(2)** of the Conduct Regulations. If an individual has additional needs or special requirements, they also have the right to be accompanied at the hearing by someone who is helping them with that need and for reasonable adjustments to be made to facilitate their attendance.

11.89 The hearing must not ordinarily be delayed solely in order to facilitate a complainant, interested person, or any other member of the public attending the hearing, see **Regulation 41(4)** of the Conduct Regulations, although consideration will need to be given to whether a complainant or interested person is also a witness in the matter under consideration.

11.90 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.

11.91 It will normally be appropriate for the chair 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 chair is satisfied that it does not interfere with the orderly conduct of proceedings.

11.92 A public misconduct hearing means that the public are allowed to attend in person in the room where the hearing takes place and all reasonable efforts should be made to allow for that to happen. However, at the discretion of the chair, 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.

11.93 In the case that more people wish to attend the hearing than can be accommodated, priority should be given to those for whom there is express provision in regulations to attend due to their direct interest or involvement in the case, including the complainant, any interested person, and, where appropriate, anyone acting as an observer on behalf of the IOPC.

11.94 The chair 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.

11.95 The rationale 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. 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 and General Data Protection Regulation.

11.96 In the interests of efficiency and fairness, the expectation will be that representations are provided and considered in advance of the hearing wherever possible and this should be encouraged by the chair. However, the appropriate authority, the officer concerned, the IOPC, the complainant, any interested person or their representatives may as an exception, at the discretion of the chair, make oral or written representations at the hearing itself, whether or not they have already made written representations in advance of the hearing. This may be in relation to new circumstances of the case that in their view should lead to any person being excluded from all or any part of the proceedings and were not apparent before the start of the hearing. It may be appropriate for the chair to direct that the public be excluded whilst any oral representations are heard.

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

11.98 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 chair may require those persons to withdraw while the submission is made. In particular, this

will be in cases involving sensitive matters of a private and personal nature or where medical matters involving the officer concerned are to be disclosed.

11.99 The decision about whether to allow any person to remain or not whilst submissions are made in mitigation is a decision for the chair, 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 chair 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.

11.100 If the chair decides that the public should be excluded from all or part of the hearing, they should separately 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.

11.101 The chair, together with the panel, may deliberate in private, in the absence of the public and the parties and their representatives, at any time.

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

11.103 Under **Regulation 39(4)** of the Conduct Regulations, where it appears to the chair 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 chair must require such attendees to withdraw while the evidence is given.

11.104 Although the Conduct Regulations allow for any person to be excluded by the chair, a person acting as an observer on behalf of the IOPC should not normally be excluded unless it appears to the chair that there is a compelling reason for doing so, particularly in cases where the Director General has the entitlement to make representations.

11.105 As per **Regulation 37** of the Conduct Regulations, the officer concerned must attend the hearing. Where the officer informs the chair that they are unable to attend on grounds which the chair considers reasonable, the officer may be allowed to participate in the hearing via video link or telephone. In these circumstances, the police friend will always be permitted to attend the hearing (in person or also by telephone or video link) to represent the officer.

11.106 The hearing may be conducted and concluded in the absence of the officer, whether or not they are represented.

HOW A HEARING WILL BE CONDUCTED

11.107 It will be for the chair of the hearing to determine the course of the hearing in accordance with the principles of natural justice and fairness.

11.108 The appropriate authority, or Director General as the case may be, will present the case and can appoint a relevant lawyer to represent them at the hearing. The officer concerned or their staff association may also appoint a relevant lawyer to represent the officer at the hearing. It is important to note that under **Regulation 8(2**) of the Conduct Regulations, the unavailability of one or more of the officer's preferred lawyer will not be a valid reason for delay to the misconduct hearing,

where an alternative lawyer can be found. Where no lawyer is available there may be legitimate need to postpone the hearing. The hearing cannot take place unless the officer has been notified of their right to legal representation, as under **Regulation 41(2)** of the Conduct Regulations.

11.109 The panel will have read the investigator's report together with any account given by the officer concerned during the investigation or when submitting their response under **Regulation 31** of the Conduct Regulations. The panel will also have had the opportunity to read the relevant documents provided to the officer under **Regulation 30** of the Conduct Regulations.

11.110 A record of the misconduct hearing must be taken. This will be by means of a verbatim record whether by tape recording or any other recording method.

11.111 Any document or other material that was not submitted in advance of the hearing by the appropriate authority or the officer concerned may still be considered at the hearing at the discretion of the chair. 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. Any such decisions are at the chair's discretion.

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

11.113 Material that will be allowed, although not submitted in advance, will include mitigation where the officer concerned denied the conduct alleged but the panel has found that the conduct had amounted to misconduct or gross misconduct and are to decide on outcome.

11.114 Where there is evidence at the hearing that the officer concerned, at any time after being given written notice under **Regulation 17** of the Conduct Regulations (or **Regulation 17** of the Complaints Regulations), failed to mention when interviewed or when making representations to the investigator under **Regulation 18** or when responding under **Regulation 31** of the Conduct Regulations or when providing information under **Regulation 20** of the Complaints Regulations, any fact relied on in their defence at the hearing, being a fact which in the circumstances existing at the time the officer concerned could reasonably have been expected to mention when questioned or providing a written response, the misconduct hearing panel may draw such inferences from this failure as appear appropriate. This is set out in **Regulation 41(12) and (14)** of the Conduct Regulations.

REVIEWING THE FACTS OF THE CASE AND DECIDING ON OUTCOME

11.115 The persons conducting misconduct hearings will consider the facts of the case and will decide the facts (on the balance of probabilities) and whether the officer's conduct amounted to misconduct, gross misconduct or neither. Any decision must be based on a majority of the panel (the chair having the casting vote if necessary). The panel must not indicate whether any determination was taken unanimously or by a majority. If the panel decides that the officer's conduct did not amount to misconduct or gross misconduct, and no further action is taken, the chair, before the end of a period of 5 working days beginning with the first working day after completion of the hearing, must submit their report to the appropriate authority, setting out its findings. The appropriate authority must inform the officer as soon as

practicable thereafter and no entry will be made on the officer's personal record. This is set out in **Regulation 43(1) and (2)** of the Conduct Regulations.

11.116 In determining an appropriate outcome at a misconduct hearing, the panel 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.

11.117 The guidance on outcomes is intended to assist the panel under Parts 4 and 5 of the Conduct Regulations. It may also be used to inform assessments of conduct under **Regulation 14** of the Conduct Regulations or **paragraph 19A** 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 misconduct proceedings.

11.118 The Outcomes Guidance does not override the discretion of the panel but they should have due regard to this guidance in making any such decision. Their function is to determine the appropriate outcome and each case will depend on its particular facts and circumstances.

11.119 The panel will also need to take into account any previous written warnings, or final written warnings, that were live at the time of the severity assessment under **Regulation 14** of the Conduct Regulations or **Regulation 16** of the Complaints Regulations.

11.120 The chair and panel may decide during the course of the hearing (that is to say before proceedings are finished) that there is no case to answer in respect of misconduct or gross misconduct. The Regulations are silent on this point. There is precedent in case law for a decision to be made. In making this decision, the chair with the panel will need to have regard to its role in law to consider the evidence and hear the case at least in part presented at the hearing. It is not for the panel to re-make the case to answer decision of the appropriate authority, Director General or other decision-maker. In cases where the Director General is presenting, the chair should consult the Director General (or person acting on their behalf).

OUTCOMES AT A MISCONDUCT HEARING

11.121 A panel at a misconduct hearing can find that the case against the officer, on the balance of probabilities, amounts to misconduct or gross misconduct or neither. If the panel decides that the conduct amounts to neither, the panel may direct the matter to be referred under the Reflective Practice Review Process or determine that no further action is taken. This is set out in **Regulation 42(1)(b)** of the Conduct Regulations**.**

11.122 If the panel find the case against the officer proven as to misconduct, disciplinary action will follow and they must decide to impose one of the following disciplinary actions:

a) written warning, subject to 11.126,
b) final written warning, subject to 11.126
c) reduction in rank, subject to paragraph 11.134 and 11.136 below,
d) dismissal without notice, subject to paragraph 11.145 below.

11.123 If a panel find the case against the officer proven as to gross misconduct, they can decide to impose one of the following disciplinary actions:

a) final written warning, subject to 11.126,

b) reduction in rank,
c) dismissal without notice.

11.124 Where the Director General has presented the case, the Director General will have the opportunity to make representations to the chair on the outcome of the hearing.

WRITTEN WARNINGS

11.125 Where a written warning is imposed as the disciplinary action, this will be fixed at 18 months. Where a final written warning is imposed, the panel will decide on the length that this warning will remain on the officer's record, at a minimum of 2 years to a maximum of 5 years.

11.126 A written warning must not be imposed where the officer concerned already had a written warning in force at the time of the severity assessment under **Regulation 14** in the Conduct Regulations or **Regulation 16** in the Complaints Regulations – see **Regulation 42(7)** of the Conduct Regulations. A written warning or final written warning must not be imposed where the officer concerned already had a final written warning in force under **Regulation 14** of the Conduct Regulations or **Regulation 16** of the Complaints Regulations – see **Regulation 42(8)** of the Conduct Regulations.

11.127 When considering the length of time that the final written warning should stay on the officer's record, the panel should take into account:

a) the seriousness of the conduct,
b) the circumstances that gave rise to the misconduct,
c) the public interest,
d) the mitigation offered by the officer including previous record of conduct.

11.128 Written and final written warnings will be put on an officer's file and will remain live for the period stipulated by the panel from the date the warning is given. This means that in the case of a written warning any misconduct in that period is likely to lead to (at least) a final written warning.

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

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

11.131 Where an officer who has a live written warning or final written warning takes a career break in accordance with the Police Regulations 2003, then any time on such a break will not count towards the length the warning is held on record.

MULTIPLE FINDINGS OF MISCONDUCT

11.132 Where more than one allegation of misconduct against the officer concerned has been found proven, it is for the panel to decide whether, taken together, the misconduct may amount to gross misconduct. In cases where the conduct amounts to misconduct, the outcomes of reduction in rank and dismissal are available if the incidents are not closely factually connected - see **Regulation 42(3)(a)(iii) and (6)** of the Conduct Regulations. The outcomes for misconduct or gross misconduct will be subject to the same considerations that would be

made for a case where there is one allegation proven of misconduct or gross misconduct. It will be for the person conducting the misconduct proceedings to consider whether it is appropriate in the circumstances to consider matters as a whole and return a combined finding or whether each allegation should be considered separately.

REDUCTION IN RANK

11.133 Reduction in rank as a sanction is an available outcome at a misconduct hearing where the officer's conduct is found proven as misconduct or gross misconduct. In cases of gross misconduct, it is suitable where dismissal is not justified but the conduct warrants a tougher penalty than that provided by a final written warning and the circumstances of the behaviours in question and the findings made make this an appropriate outcome. Immediate dismissal from policing should continue to be the sanction in circumstances of gross misconduct and the threshold above which dismissal will continue to be justified and where accordingly the panel should continue to dismiss.

11.134 In the case of misconduct, reduction in rank can only be imposed where the officer concerned had a final written warning at the time of the risk assessment or where the officer's conduct arose from more than one incident and those incidents are not closely factually connected – see **Regulation 42(3)(a)(iii), (5) and (6)** of the Conduct Regulations.

11.135 Reduction in rank should only be used where circumstances warrant it. It should not be an outcome as a 'softer option' or simply where there is sympathy for the officer concerned. It is available as a sanction where there are questions of poor leadership related to the specific responsibilities of senior ranks in the police force where there may be different expectations of behaviour. For example, senior-most officers have additional responsibilities under the Code of Ethics over and above other non-leadership roles. Senior leaders will be expected to be a role model for non-senior officers and judgments on behaviour - such as inappropriate behaviour - may be made in this context. Where an officer is made subject to a reduction in rank, this should be a reduction from their substantive rank and not acting or temporary rank. Where an officer has been temporarily promoted following selection at stage 3 of the National Police Promotion Framework, their temporary rank will be considered their substantive rank for these purposes.

11.136 Where the officer had previously been reduced in rank under the 2004 or 2020 Conduct Regulations at the time of the severity assessment under **Regulation 14** of the Conduct Regulations or **Regulation 16** of the Complaints Regulations, reduction in rank cannot be imposed see **Regulation 42(13)** of the Conduct Regulations. Reduction in rank may only be imposed where the views of the appropriate authority, including in relation to likely operational impact, have been taken into account (**Regulation 42(12)**). Circumstances when reduction in rank would be appropriate and misconduct falls below the dismissal threshold might include:

a) where a poor leadership example was set by the misconduct bringing, to a limited extent, the force and the seniority of rank into disrepute,
b) where the conduct may have been discreditable but there are fewer aggravating factors such as a malign intent, an absence of operational dishonesty, premeditation, or serious harm,
c) in cases where gross misconduct had been proved but there are significant mitigating circumstances that weigh against full dismissal but

not enough to justify a final written warning.

11.137 Where reduction in rank is appropriate as an outcome, it will be because the misconduct justifies a reduction from the higher level in which the poor example of leadership was exercised, not that the person is unfit to lead at any level. This may be because of one off or out of character behaviour from a senior officer with a good record of service in the force. To lose the officer from policing might not be in the public interest but a written warning might appear to the public and other officers as an insufficient punishment. It may be appropriate for them to no longer continue to hold a senior position.

11.138 If the outcome is reduction in rank, the officer may be reduced by one or more ranks to an appropriate rank, determined by the misconduct hearing panel.

11.139 Reduction in rank is clearly not possible for police constables. Where two or more officers face the same or similar allegations of misconduct one or more of whom are police constables there is the potential for disparities in outcome. A misconduct panel should consider sanctions carefully in these circumstances. For example, if the conduct is seen as inappropriate and discrediting the force but there are fewer aggravating factors, a sanction less than dismissal might be appropriate for a non-senior officer. The same behaviour for a senior officer, however, who may be expected to be a role model and show an example of leadership, might justify a sanction higher than written warning but short of full dismissal.

11.140 A constable or non-senior officer should not be dismissed where a senior officer is reduced in rank for the same misconduct and there are no clear attenuating or mitigating circumstances that would make the lower sanction appropriate for the senior officer.

11.141 The appropriate authority will be able to make representations at the misconduct hearing on whether reduction in rank is the most appropriate sanction specifically on operational grounds. These representations can be connected to the practicalities in the use of the sanction and include:

a) where an officer does not have the qualifications needed to perform at the next lower rank, or there is not an available position at the lower rank,

b) where, due to the nature of the role of a Chief Constable and their appointment, it would not be appropriate or possible for them to hold another position within the police force at a lower rank.

11.142 The misconduct hearing panel will take into account the operational difficulties that may be involved in reducing the officer in rank and may decide in light of the representations of the appropriate authority that the sanction is not appropriate in those circumstances.

11.143 Where an officer has been reduced in rank, any subsequent promotion board or person appointing must take this fact into account for the 2 years starting with the date on which the outcome is determined. There is a rebuttable presumption during this period that the officer concerned should not be re-appointed to the rank previously held.

DISMISSAL

11.144 Where dismissal is the outcome, it is effective immediately and the force must notify the College of Policing that the officer must be placed on the police barred list, as per Chapter 21.

11.145 In the case of misconduct, dismissal can only be imposed as a sanction where the officer concerned had a final written warning at the time of the risk assessment or where the officer's conduct arose from more than incident and those incidents are not closely factually connected – see **Regulation 42(3)(a)(iv), (5) and (6)** of the Conduct Regulations.

MITIGATION

11.146 Evidence of mitigating factors at a hearing is designed to allow the panel, when considering the outcome and appropriate disciplinary action, to take into account circumstances that may reduce the seriousness of the misconduct. This includes evidence connected to the officer's previous record and circumstances that may have affected the officer at the time of the conduct or actions taken subsequently to reduce the level of harm. The College of Policing's Guidance on outcomes in police misconduct proceedings supports the panel in weighing evidence of mitigating factors.

11.147 Oral or written evidence of mitigating factors can be presented to the panel by:

a) the officer concerned,
b) the officer's police friend or relevant lawyer,
c) the appropriate authority or their counsel,
d) the Director General or their counsel, where the Director General has presented the case.

11.148 When circumstances which mitigate against misconduct are only mentioned late in a hearing by the officer concerned it could preclude earlier interventions which might have proved to be more positive in terms of outcome. For example, earlier interventions might potentially have introduced lower level interventions including additional supervision, management steps or the use of the Reflective Practice Review Process that avoid the misconduct process.

11.149 There are existing opportunities for officers subject to disciplinary proceedings to present mitigating circumstances prior to the proceedings: in **Regulation 31(2)(b)** of the Conduct Regulations- on receipt of notice of proceedings - the officer can provide a written submission that includes any mitigation where the officer accepts that their conduct amounts to misconduct or gross misconduct.

11.150 Clearly there will be some circumstances where an officer has not admitted to misconduct earlier in the proceedings but personal and/or health problems may, in hindsight, have been factors and might subsequently be presented in mitigation. **Regulation 42(14)(b)** provides for evidence that the officer concerned came forward to a staff association or a medical practitioner (or to someone in the force) prior to the hearing with evidence of those mitigating circumstances.

11.151 If the opportunities outlined above have not been taken, the misconduct hearing panel can place less weight on mitigation that is presented only late in the hearing where they consider that the circumstances could have been mentioned at an earlier stage.

11.152 It is important to note that the appropriate authority can make representations to the panel regarding the outcome at the misconduct hearing where the

misconduct or gross misconduct has been proven either in terms of applying harsher or lesser sanctions depending on individual circumstances.

REPORT OF THE OUTCOME

11.153 Under **Regulation 43** of the Conduct Regulations, the chair of the misconduct hearing is responsible for compiling a report of the hearing within 5 working days of the hearing, beginning with the first working day after the completion of the hearing, and submitting it to the appropriate authority. The report should contain:

a) the findings of the misconduct hearing (i.e. whether the conduct amounted to misconduct, gross misconduct or neither),
b) the reasons for those findings,
c) any disciplinary action imposed and the reasons why that disciplinary action was made,
d) any direction that the matter be dealt with under the Reflective Practice Review Process.

11.154 The appropriate authority must, as soon as practicable following receipt of this report, copy the report to the officer, notifying them of their right to appeal and the person to whom an appeal should be sent. The appropriate authority must also copy this report to the Director General, where the Director General has presented or was entitled to make representations at the hearing, and to any complainant or interested person, where relevant, including the fact and outcome of any appeal against the outcome.

11.155 The chair of the misconduct hearing is also responsible for providing the appropriate authority with information that they consider ought to be included in the police barred list (as under **Regulation 42(16)** of the Conduct Regulations). This information should relate to whether there are any justifiable exemptions to publish the details of the officer.

11.156 Unless the chair determines that publication is not appropriate for any of the reasons set out in **Regulation 43(9)(a)** of the Conduct Regulations, broadly speaking the harm test except that disproportionate effort is excluded, or in line with any restrictions imposed on the disclosure of information during the course of proceedings, they must require the appropriate authority to publish the full determination of the misconduct hearing. This must be done as soon as practicable following the officer being informed of the outcome and the report must remain on their website for at least 28 calendar days. This should be subject to permissible redactions that relate to currently agreed exceptions and the reason for those exceptions should be clearly explained by the appropriate authority. Redactions are set out in **Regulation 43(9)** of the Conduct Regulations. Redactions may be:

11.157 The appropriate authority should use the report on the outcome of the hearing and comments made by the chair in consideration of any useful organisational learning which can be identified from the process.

APPEALS

11.158 A police officer has the right to appeal against the finding or outcome of a misconduct hearing to a Police Appeals Tribunal (see Chapter 26 of this guidance on Appeals). The officer must be informed of their right to appeal when notified of the outcome (**Regulation 43(2)** of the Conduct Regulations).

SECTION 3: DISCIPLINARY PROCESSES AND PROCEEDINGS

CHAPTER 12: ACCELERATED MISCONDUCT HEARINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The conduct, administration and grounds for referral to an accelerated misconduct hearing.

THIS CHAPTER INCLUDES GUIDANCE ABOUT:

- Introduction
- The special conditions for accelerated misconduct hearings
- Complaint cases and conduct matters dealt with by local, directed or independent investigation
- Persons conducting the accelerated misconduct hearing
- Absence of officer concerned at the accelerated misconduct hearing
- Accelerated misconduct hearing procedures
- Procedure at an accelerated misconduct hearing
- Evidence
- Outcomes

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers involved in disciplinary proceedings,
- Legally Qualified Chairs,
- Police Friend representing an officer involved in disciplinary proceedings,
- Appropriate authorities,
- Professional Standards Departments,
- Counsel for appropriate authorities or officer concerned,
- IOPC staff.

INTRODUCTION

12.1 This chapter sets out the procedure for accelerated misconduct hearings, what the special conditions are for, their use including where the investigation was under Schedule 3 to the 2002 Act, who should hear the case, how they are conducted and what the outcome can be. The information in this chapter will be used by appropriate authorities, those who preside over accelerated misconduct hearings and should be read and understood by all officers involved in an accelerated misconduct hearing including their police friend.

12.2 From the commencement of the 2020 Conduct Regulations, fast track misconduct procedures are referred to as accelerated misconduct hearings. Part 5 of the Conduct Regulations sets out the procedures for dealing with these cases.

12.3 An accelerated misconduct hearing can only be used if the appropriate authority certifies the case as a special case, having determined that the 'special conditions' set out in Regulation 49(2) of the Conduct Regulations are satisfied or if the Director General of Independent Office for Police Conduct (IOPC) has given a direction under paragraph 20A of Schedule 3 to the 2002 Act.

THE SPECIAL CONDITIONS FOR ACCELERATED MISCONDUCT HEARINGS

12.4 The 'special conditions' are that –

a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities, that the conduct of the officer concerned constitutes gross misconduct and

b) it is in the public interest for the officer concerned to cease to be a police officer without delay.

12.5 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 officer to cease to be a member of the police service straightaway.

12.6 Special conditions should also be considered where the officer concerned agrees the facts of the case and an admission that their conduct amounted to Gross Misconduct.

12.7 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.

COMPLAINT CASES AND CONDUCT MATTERS DEALT WITH BY LOCAL, DIRECTED OR INDEPENDENT INVESTIGATION

12.8 Where there has been an investigation under Schedule 3 to the 2002 Act, in other words subject to local, directed or independent investigation by the Director General, the procedure for applying the test for special conditions will need to follow the Complaints Regulations and Schedule 3 to the 2002 Act. The table below sets out the procedure for different investigations:

Type of Investigation	Procedure	Regulation
Investigation by the appropriate authority (under para 16 of Schedule 3)	a) Investigator submits report to the appropriate authority with statement of belief that the appropriate authority would consider special conditions satisfied, copying the Director General where relevant, b) appropriate authority determines whether special conditions are satisfied under Paragraph 20A and notifies Director General	Regulation 24(2) of the Complaints Regulations Regulation 25 of the Complaints Regulations
Investigation by the appropriate authority under direction of the Director General (under para 18 of Schedule 3)	a) Investigator submits report to the Director General with statement of belief that the appropriate authority would consider special conditions satisfied, b) The Director General agrees that the special conditions are satisfied and sends report to appropriate authority, c) appropriate authority determines whether special conditions are satisfied under Paragraph 20A, d) appropriate authority certifies that special conditions are satisfied or submits memo to Director General if it does not consider the special conditions satisfied,	Regulation 24(3) of the Complaints Regulations Schedule 3 para 20A(1) Regulation 24(3)(b) of the Complaints Regulations

	e) Director General considers memo and may decide to direct appropriate authority to certify that special conditions are satisfied	Regulation 26 of the Complaints Regulations
Investigation by the Director General (under para 19 of Schedule 3)	a) the Director General submits report to appropriate authority with statement that they consider special conditions are satisfied, b) appropriate authority determines whether special conditions are satisfied under Paragraph 20A, c) appropriate authority certifies that special conditions are satisfied or submits memo to Director General if it does not consider the special conditions satisfied, d) Director General considers memo and may decide to direct appropriate authority to certify that special conditions are satisfied.	Schedule 3 para 20A(1) Regulation 24(4) of the Complaints Regulations Regulation 26 of the Complaints Regulations

12.9 It should be noted that a statement of belief that the appropriate authority would consider the special conditions satisfied can only be submitted, under the 2002 Act, during an investigation – see **paragraph 20A** of Schedule 3. In contrast, the Conduct Regulations allow the statement to be submitted at any time during or after the investigation – see **Regulation 21(3)** of the Conduct Regulations.

12.10 The complainant or interested person will have the right to attend the accelerated misconduct hearing as an observer subject to any exclusion or conditions imposed by the person conducting proceedings under **Regulation 59(2)** of the Conduct Regulations, having considered any representations made under **Regulation 53** of the Conduct Regulations.

12.11 Where a complainant or interested person is to attend an accelerated misconduct hearing they 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.

12.12 A complainant or interested person who is permitted to attend an accelerated misconduct hearing, and any person accompanying the complainant or interested person, will be permitted, subject to any conditions imposed by the person conducting the hearing, 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.

12.13 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 directed by the IOPC) to inform the complainant or interested person of the outcome of the hearing whether the complainant or interested person attends or not.

12.14 The Director General or their representative may attend the accelerated misconduct hearing to make representations in any case which has been subject to a directed or independent investigation, or where the IOPC has recommended or directed an accelerated misconduct hearing in respect of a local investigation. See **Regulation 58(1)** of the Conduct Regulations.

PERSONS CONDUCTING THE ACCELERATED MISCONDUCT HEARING

12.15 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 (**Regulation 55(1) and (2)).** In the case of a senior officer, the case will be heard by a panel as set out in **Regulation 55(4)** of the Conduct Regulations. The police officer will have a right of appeal under **Rule 4(1)** of the Police Appeals Tribunal Rules 2020 to a Police Appeals Tribunal against any finding of gross misconduct and the disciplinary action imposed. See **Regulation 63(2)** of the Conduct Regulations regarding notification of this right of appeal.

ABSENCE OF OFFICER CONCERNED AT THE ACCELERATED MISCONDUCT HEARING

12.16 The officer concerned must attend the accelerated misconduct hearing. If they are unable to attend physically on reasonable grounds the person conducting the accelerated misconduct hearing may allow the officer to participate by video link or other means, as set out in **Regulation 57(1) and (2)** of the Conduct Regulations). The accelerated misconduct hearing may proceed in the absence of the officer concerned, but the persons conducting the hearing should ensure that the officer concerned has been informed of their 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. This also applies where the officer concerned participates by video link or other means.

ACCELERATED MISCONDUCT HEARING PROCEDURES

Consideration in advance of the hearing

12.17 Where the appropriate authority determines that the special conditions are satisfied (or the Director General determines or directs under the conditions outlined in paragraph 7.51), unless it considers that the circumstances are such to make it inappropriate to do so, they must certify the case as an accelerated case and refer it to an accelerated misconduct hearing as under **Regulation 49(4)** of the Conduct Regulations. The decision as to whether a case is suitable for accelerated procedure will be taken by the appropriate authority (or the Director General) 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, as set out in **Regulation 2(4)** of the Conduct Regulations.

12.18 If the appropriate authority decides that the accelerated misconduct procedures will not be used, under **Regulation 49(5)** of the Conduct Regulations, or if the Director General determines not to direct the appropriate authority to certify the case in accordance with **Regulation 26** of the Complaints Regulations, then they will refer it back to the investigator if further investigation is required or to the appropriate authority to proceed under the standard procedures.

12.19 If the appropriate authority decides that the accelerated misconduct procedures should be used then they will sign a "Special Case Certificate" and will, as soon as practicable, provide to the officer concerned notice giving particulars of the conduct that is alleged to constitute gross misconduct and copies of:

a) the Special Case Certificate,

b) any statement the police officer may have made to the investigator during the course of the investigation,

Subject to the Harm Test:

c) the investigator's report (if any) or such parts of that report as relate to the officer concerned, together with any documents attached to that report and

d) any other document which might reasonably be considered capable of undermining or assisting the case.

12.20 The officer concerned will also be told the date, time and place of the hearing and of their right to legal representation and to advice from a 'police friend'.

12.21 The date of the hearing 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 officer concerned.

12.22 Within 7 working days, beginning with the first working day after the written notice and documents are supplied to the officer concerned, the officer shall provide to the appropriate authority:

a) written notice of whether or not they accept that their conduct constituted gross misconduct,
b) where they accept that the conduct constituted gross misconduct, any submission they wish to make in mitigation,
c) where they do not accept that the conduct constituted gross misconduct:
    a. the allegations they dispute and their version of the relevant events, and
    b. any arguments on points of law they wish to be considered by the person or persons conducting the hearing.

d) a copy of any document they intend to rely on at the accelerated misconduct hearing. See **Regulation 54** of the Conduct Regulations.

12.23 Following receipt from the officer concerned, the appropriate authority will provide the person conducting or chairing (in the case of a senior officer) the hearing with copies of:

a) the notice and other documents provided to the officer under **Regulation 51,**
b) the documents provided by the officer under **Regulation 54** (and where the case has been delayed due to criminal proceedings under **Regulations 31(2) and (3))** and,
c) where the officer does not accept that their conduct amounts to gross misconduct, any other documents that the appropriate authority believes should be considered at the hearing. See **Regulation 56** of the Conduct Regulations,
d) it should be seen as good practice to provide them at least 3 working days prior to the hearing. Before the accelerated misconduct hearing the appropriate authority must provide the officer concerned with a list of documents that it supplied to the person conducting or chairing the hearing and a copy of any such document that has not already been supplied to the officer.

Procedure at an accelerated misconduct hearing

12.24 In general, the person chairing the accelerated misconduct hearing will determine the procedure subject to **Regulation 61** of the Conduct Regulations

and is able to decide on adjournments where necessary and the admission of documents that are to be considered by the hearing.

12.25 The requirements and considerations for the procedure at an accelerated misconduct hearing apply as set out in Chapter 11 of this guidance for misconduct hearings.

12.26 Representatives for the officer and the appropriate authority will be able to address the hearing to put forward the respective cases and respond on their behalf. It is for the person conducting or chairing the accelerated misconduct hearing to determine whether and by whom the officer can be questioned and no witness other than the officer may be questioned (**Regulation 61(6)** of the Conduct Regulations). It is important to note that the police friend or relevant lawyer at an accelerated misconduct hearing may not answer any questions on behalf of the officer concerned.

12.27 The person or persons conducting the accelerated misconduct hearing will decide on whether the conduct amounts to gross misconduct on the balance of probabilities (as they would in a full hearing) or they will come to that decision if the officer admits that their conduct amounted to gross misconduct.

Evidence

12.28 There will be no oral witness testimony at the accelerated misconduct hearing other than from the 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 they provided in support of their case, a copy of the investigator's report or such parts of that report as relate to the officer concerned, statements made by the police officer during the investigation, and in a case where the officer concerned denies the allegation against them, copies of all statements and documents that in the opinion of the appropriate authority should be considered at the hearing.

OUTCOMES

12.29 As set out in **Regulation 62** of the Conduct Regulations, where the persons conducting the accelerated misconduct hearing find that the conduct of the officer concerned amounted to gross misconduct, then they must impose disciplinary action, which may be:

a) final written warning (unless a final written warning has been imposed on the officer concerned within the previous 2 years, or such extended period as determined by the panel at previous hearing) or
b) reduction in rank or
c) dismissal without notice - this outcome has the additional consequence of being included on the barred list.

12.30 Reduction in rank should only be used as a sanction in certain circumstances (as set out in **Regulation 62(6) and (7)** of the Conduct Regulations and further described in Chapter 11 on misconduct hearings) and where gross misconduct is proven outside those circumstances, dismissal without notice should be the disciplinary action taken. In these circumstances dismissal is with immediate effect. The appropriate authority may also make representation as to the appropriateness of reduction in rank as a sanction given operational circumstances (and as described in the chapter on misconduct hearings).

12.31 Where the persons conducting the hearing determine that the conduct does not amount to gross misconduct they may dismiss the case or refer the case back to

the appropriate authority to be dealt with under the procedures of Part 4 of the Conduct Regulations.

12.32 Where the case has been returned to the appropriate authority to deal with at a misconduct meeting or hearing (where there is a live final written warning), such a case will be dealt with under the standard procedures.

12.33 There is power under **Regulation 50** of the Conduct Regulations 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 accelerated misconduct hearing. This might be because the officer or the appropriate authority considers that a particular witness whose evidence is crucial to the case and is disputed must be called to give oral testimony. Where the appropriate authority directs that a case be so remitted the officer concerned must be notified before the end of 3 working days beginning with the first working day after that direction is made.

12.34 Where disciplinary action is being considered at the accelerated misconduct hearing (i.e. the police officer admits the allegation or the persons conducting the hearing find it proved on the balance of probabilities), then the persons conducting the hearing:

a) must have regard to the record of police service of the officer concerned as shown on their personal record,
b) may consider such documentary evidence as would, in their opinion, assist them in determining the question,
c) must give the officer concerned, and their police friend or relevant lawyer, the appropriate authority or Director General, where relevant, an opportunity to make oral or written representations.

12.35 The officer concerned will 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. The person conducting the accelerated misconduct hearing must provide the appropriate authority with a report of the hearing before the end of 5 working days, beginning with the first working day after the completion of the hearing. This report should include the findings and reasons for those findings and any disciplinary action imposed, as well as the right of appeal to a Police Appeals Tribunal.

12.36 The appropriate authority must, as soon as practicable after receiving this report, notify the officer concerned of the outcome by sending the officer that report, as set out in **Regulation 63** of the Conduct Regulations.

12.37 The chair of the accelerated misconduct 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, bearing in mind that these exemptions apply only in the most exceptional circumstances.

SECTION 4: REFLECTIVE PRACTICE REVIEW PROCESS

This section contains guidance about the Reflective Practice Review Process set out in Part 6 of the Police (Conduct) Regulations in relation to matters that constitute Practice Requiring Improvement.	*Page number*
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SECTION 4: REFLECTIVE PRACTICE REVIEW PROCESS

CHAPTER 13: PRACTICE REQUIRING IMPROVEMENT AND REFLECTIVE PRACTICE REVIEW PROCESS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

How matters amounting to Practice Requiring Improvement should be handled, including conducting the Reflective Practice Review Process (set out in Part 6 of the Conduct Regulations). It sets out the principles and aims of this new way of dealing with matters of this type within the ethos of individual and organisational learning through reflection and improvement.

IT INCLUDES GUIDANCE ABOUT

- Introduction
- Who does this guidance apply to and when should it be used
- Reflective Practice Review Process: learning culture - principles and ethos
- Reflective Practice Review Process: points of referral and links to other procedures
- Interaction with Unsatisfactory Performance System
- Safeguards and protections for the participating officer
- The Reflective Practice Review Process steps
- The role of the force and the wider organisation
- PRI arising from a complaint from a member of the public
- Escalation routes
- Role of the appropriate authority

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Senior Leaders
- Appropriate authority decision makers
- HR professionals
- Line Managers and Supervisors
- Officers who are undergoing the Reflective Practice Review Process / Practice Requiring Improvement
- Police friends or others acting in an advisory role

INTRODUCTION

13.1 This chapter relates to the handling of matters that are identified as *Practice Requiring Improvement* where such matters would not justify the bringing of disciplinary proceedings and how they should be handled. It is intended to provide guidance to appropriate authority decision makers in making referrals, to line managers/supervisors who will lead this process as *reviewers* and for officers undertaking the *Reflective Practice Review Process* as a participant. The Reflective Practice Review Process is set out in Part 6 of the Conduct Regulations, with various referral points in the handling, investigation or proceedings stages of the different regimes.

13.2 This process relates to behaviours and actions that have often previously (Pre-2020 Regulations) been captured and handled within formal investigations and disciplinary proceedings as allegations of misconduct and often resulted in lower level actions and outcomes including, Management Advice, or no further action in some instances.

13.3 Under the reformed post-2020 system, the intention is that disciplinary proceedings are focused and applied to serious breaches of the Standards of Professional Behaviour where it is clear that a formal disciplinary sanction (at a minimum a written warning) is justified.

Where a matter, whether raised/identified internally or via 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 and supervisors with a clear focus on reflection, learning from mistakes and focusing on actions / development to improve and, where necessary, put the issue right and prevent it from happening again.

13.4 Any matter that is identified as Practice Requiring Improvement should not be interpreted as misconduct and the Conduct Regulations are specific that the Reflective Practice Review Process does not constitute disciplinary proceedings. Whilst they are contained within the Conduct Regulations, Part 6 is excluded from the definition of disciplinary proceedings, as set out in **Regulation 2.** No action taken within this process can constitute disciplinary action or lead to a disciplinary outcome.

WHO DOES THIS GUIDANCE APPLY TO AND WHEN SHOULD IT BE USED

Practice Requiring Improvement - *means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics*

13.5 This guidance should be used when Practice Requiring Improvement has been identified, following a complaint or allegation which does not justify disciplinary proceedings but does identify alleged behaviour which may have fallen below expectations.

13.6 In these circumstances, a referral will be made by the appropriate authority to the relevant line manager and supervisor who will be the responsible “reviewer” for conducting the Reflective Practice Review Process with the “participating officer”. It should be noted that the participating officer may be a chief officer, where appropriate. In these circumstances the local policing body would act as the reviewer.

REFLECTIVE PRACTICE REVIEW PROCESS: LEARNING CULTURE - PRINCIPLES AND ETHOS

13.7 The purpose behind this reformed system is to develop an approach to the handling of matters which fall short of the expectations set out in the Code of Ethics and are considered low level conduct, mistakes or performance issues that can be handled in a more proportionate and constructive way without recourse to formal disciplinary proceedings or performance procedures.

13.8 Many parts of the formal police disciplinary system can at times feel like an adversarial and combative process and often involve significant stress for all parties because of the nature of proceedings. The Reflective Practice Review Process for dealing with Practice Requiring Improvement is intentionally designed as a non-adversarial environment. It is intended to involve accountability for actions and taking responsibility by individual officers and the organisation. The process is intended to provide an open and reflective environment to approach issues and mistakes that have arisen. There should therefore follow a greater willingness to discuss the facts at issue and a positive attitude about taking steps to put things right and improve for the future.

13.9 This ethos and culture must apply equally to all parties: to the participating officer, to line managers and supervisors and to the organisation, all of whom must also be willing to listen, to reflect and to take meaningful action to learn lessons, make changes and support individuals.

13.10 The principal focus of following this process is to learn and to develop by improving from mistakes, poor judgement and low-level wrongdoing through early intervention. The process is designed to be inclusive, reflective and participative for the officer involved, and to be a process in which they can engage and take genuine learning and positive action from.

13.11 These processes are intended to reflect and encourage a learning culture within and across policing. It is important that both individual officers and police forces acknowledge the importance of learning and take the opportunity to identify lessons and opportunities to improve.

13.12 Line managers and supervisors have an important responsibility in engaging in difficult conversations locally and addressing shortcomings through this process. Taking these steps relies on trust, in line managers and in the organisation that where mistakes are admitted, support is provided and the emphasis is on positive steps to move forward, not apportioning blame or prescribing punishment. Officers should have the confidence that unintentional mistakes, shortcomings or failings will be handled in a constructive way and admissions of such behaviour or mistakes will not be to their detriment or result in being punished. Instead they will be supported through constructive steps to aid their improvement and organisational learning identified to improve the wider environment.

13.13 These principles also apply to organisational learning. Individual forces, led by their Chief officers and senior leaders, should use this process to consider whether there are improvements that are identified or actions that can be taken to improve how the force as a whole interacts with members of the public and the community.

REFLECTIVE PRACTICE REVIEW PROCESS – POINTS OF REFERRAL AND LINKS TO OTHER PROCEDURES

13.14 There are a number of referral points into the Reflective Practice Review Process, depending on the circumstances of the individual case, how the issues came to light and at what stage in other processes it is identified that the matter falls within the definition of Practice Requiring Improvement.

13.15 These referral points, according to the source of the matter are summarised below. For more detailed guidance on how these matters should be handled and referred at the specific decision points, see the relevant chapters elsewhere in this guidance.

TYPE OF MATTER	REFERRAL POINT
Complaints and other matters handled according to Schedule 3	9.1 **Schedule 3, Paragraph 6(2A) -** Duty to handle a complaint in a reasonable and proportionate manner, 9.2 **Schedule 3, Paragraph 23(5A) (c) and Regulation 21 of Conduct Regulations -** Following an investigation under Schedule 3 that finds no case to answer or that disciplinary proceedings are not justified, 9.3 **Schedule 3, Paragraph 24(6) -** Where an investigation report is submitted under paragraph 22 of Schedule 3, the appropriate authority determines that there is no case to answer for misconduct or gross misconduct, 9.4 **Schedule 3, Paragraph 28ZA** – Following a recommendation or direction issued by either the Director General of the IOPC or local policing body, as the case may be.

	9.5 **Regulation 27 of Conduct Regulations -** If disciplinary proceedings, if brought, are withdrawn before they commence. 9.6 **Regulation 42 of Conduct Regulations –** Following misconduct meeting or hearing, where the person conducting or chairing directs that a matter is referred by the appropriate authority.
Matters handled under the Conduct Regulations (internal (non-recordable) conduct matters)	• **Regulation 14 -** Following a severity assessment in line with Regulation 14 of the Conduct Regulations that the matter if proved would not amount to misconduct or gross misconduct and a referral made in accordance with 14(2), • **Regulation 14 / 21 -** Following a revised severity assessment in line with Regulation 14 and 21 of the Conduct Regulations that the matter if proven would not amount to misconduct or gross misconduct, • **Regulation 23 -** Following an investigation under the Conduct Regulations or Schedule 3 that finds no case to answer or that disciplinary proceedings are not justified, • **Regulation 27 -** Where disciplinary proceedings, if brought, are withdrawn before they commence, • **Regulation 42 –** Following misconduct meeting or hearing, where the person conducting or chairing directs that a matter is referred by the appropriate authority.

13.16 In considering making a referral at any of these points, the appropriate authority should seek the views of the line manager or supervisor to ensure that any such decision to refer is suitably informed by the local circumstances and context. This may include any previous history involving the officer or relevant issues that line managers or supervisors could be aware of that could affect the appropriateness of a decision to refer a matter to the Reflective Practice Review Process rather than consider formal unsatisfactory performance procedures or misconduct proceedings.

13.17 The decision to refer a matter to be handled in this way ultimately rests with the appropriate authority, the Director General or chair following a direction or the local policing body following a recommendation. In all cases the appropriate authority will have taken into account the views of the line manager or supervisor.

13.18 The process will then be led by the line manager or supervisor as the reviewer but the appropriate authority may provide guidance and advice at this stage, or at any stage during the process, about the handling of the matter and appropriate courses of action, if required by the line manager. It is nevertheless important that the process is one that engenders trust and confidence between the reviewer and participating officer and that it is ultimately the reviewer who must lead this process and determine any appropriate action to be taken.

13.19 Following the conclusion of misconduct proceedings, the chair is able to direct that a matter is referred to be dealt with under the Reflective Practice Review Process under **Regulation 42** of the Conduct Regulations. The chair will need to direct the matter to the appropriate authority, who will consult with the officer's line manager to begin the process. In the majority of cases, the appropriate authority is expected to complete the referral to the Reflective Practice Review Process, unless there are substantial reasons identified during the line manager consultation meaning that it would be inappropriate to do so.

INTERACTION WITH UNSATISFACTORY PERFORMANCE SYSTEM

Unsatisfactory Performance: *means an inability or failure of a police officer to perform the duties of the role or rank they are currently undertaking to a satisfactory standard or level.*

13.20 Where the definition of unsatisfactory performance is met, an issue should be handled in accordance with the Performance Regulations. Where, however, this threshold is not met but behaviour does fall into the definition of Practice Requiring Improvement, the appropriate authority may refer the matter to be handled under the Reflective Practice Review Process according to this section of guidance.

13.21 Unsatisfactory performance will be more likely to be relevant in circumstances where there has been a pattern or series of instances which demonstrate the inability or failure to perform, in particular where previous early interventions and management steps to address the issues of performance have been unsuccessful.

13.22 The Reflective Practice Review Process will be more appropriate either for one-off issues or instances or where there have been limited previous attempts to address emerging concerns around performance.

13.23 There may also be circumstances where the appropriate authority is of the view that it is more appropriate to handle a matter under the Reflective Practice Review Process, rather than enter formal performance proceedings. Exercising this discretion will ultimately be dependent on the particular circumstances of an individual case.

13.24 There is a pre-existing ability for line managers to handle performance issues informally prior to the first stage of UPP (see paragraph 14.8 of this guidance) and the Reflective Practice Review Process sits outside this. Where line managers identify a low level conduct matter or underperformance which is clearly suitable to be handled under the Reflective Practice Review Process, they should not seek to refer the matter to the appropriate authority for recording and severity assessment in order to refer the case to the Reflective Practice Review Process, but instead should handle the matter locally as part of their normal line management duties. Whilst outside of the Conduct Regulations, handling of such matters should be within the principles of reflective practice and a written record of the matter, meeting and any learning points should be made on the officer's Personal Development Record (PDR).

13.25 Where line managers believe that a matter may fall under the definition of 'misconduct', they should refer the matter to the Professional Standards Department for the appropriate authority to conduct a severity assessment in line with **Regulation 14** of the Conduct Regulations.

13.26 If, however, there is a reoccurrence of a performance related issue following the completion of the Reflective Practice Review Process, this could lead to the matter being escalated to the formal UPP procedures. This would mirror such an escalation to a formal misconduct investigation should there be a future repeat of potential misconduct such that disciplinary proceedings could be justified.

SAFEGUARDS AND PROTECTIONS FOR THE PARTICIPATING OFFICER

13.27 Where a matter is handled under the Reflective Practice Review Process in accordance with Part 6 of the Conduct Regulations, the participating officer is entitled to seek the advice (not representation) of a police friend as set out in **Regulation 66**. This process, and in particular the discussion stage, is to be considered as a normal line-management / performance related conversation between the reviewer and the participating officer and as such there is no entitlement or requirement for formal representation for the purposes of this process.

13.28 It is important that a positive working relationship between reviewer and participating officer is preserved and that both sides can engage with openness and confidence, in order to reflect upon and consider the issues that have been referred to the process. This is best achieved directly between the reviewer and officer involved.

13.29 **Regulation 66(4)** addresses the status of accounts provided by the officer as part of the Reflective Practice Review Process, and states:

> *"Any account given by the participating officer under regulation 67(1)(b) or during the reflective practice review discussion held under regulation 69 is not admissible in any subsequent disciplinary proceedings brought against the participating officer, 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."*

13.30 This protection provides a safeguard to allow the participating officer 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.

13.31 This approach provides parity with a similar previous provision that existed for the purposes of local resolution under Schedule 3 to the 2002 Act, albeit to a wider set of circumstances or matters than locally resolvable complaints previously handled in this way under the old Schedule 3.

13.32 This safeguard 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. In these circumstances if there were to be a case to answer and referral to misconduct proceedings, the admission and account itself from the Reflective Practice Review Process would not be admissible evidence for the purposes of those disciplinary proceedings.

13.33 If an individual discloses potential evidence of misconduct or criminality, the process, including any ongoing discussions or conversations, would need to be paused for the issue to be referred to the appropriate authority for consideration and the participating officer informed to this effect. See **Regulation 68** of the Conduct Regulations.

13.34 If a matter is referred for formal investigation following the Reflective Practice Review Process, an individual could be interviewed in the usual way as set out in the Conduct Regulations and Complaints Regulations. This could include questions about involvement in matters that were brought to light during previous conversations including those held for the purposes of reflective practice review discussions. In these circumstances a fresh account should be sought and additional appropriate evidence should be obtained which would be admissible in those proceedings. Care should be taken to avoid directly quoting

or referring to previous admissions or statements made during the course of the Reflective Practice Review Process.

13.35 Where an officer has been referred to the Reflective Practice Review Process following disciplinary proceedings, it is very unlikely that the case will be able to be re-investigated and re-heard, except where fresh information comes to light, which could not or had not been previously assessed by the appropriate authority.

13.36 Reviewers should seek to explore the relevant issues by asking the participating officer about the relevant circumstances themselves, providing the officer the opportunity to give a fresh account, independent of previous accounts given. Subject to the protections afforded to subjects of misconduct or criminal investigations proceedings, officers have a responsibility to provide an honest and truthful account to the best of their knowledge and belief in an investigation or subsequent proceedings.

13.37 Where arrangements are made for the matter to be subsequently investigated, no-one who was previously involved in the matter should be appointed to investigate or to assist with the investigation. This is to ensure suitable independence and fresh consideration of the evidence identified during the course of the fresh investigation.

13.38 As Part 6 of the Conduct Regulations does not constitute disciplinary proceedings, there is no formal right of appeal for this process for the officer. However, if an officer has concerns about the way that the Reflective Practice Review Process has been handled by line managers or supervisors, the officer may raise this issue or concern with the appropriate authority to discuss or consider and, where appropriate, take action if necessary.

13.39 As set out in **Regulation 66(3),** as a result of participating in the process, an individual will not be prevented from applying for or obtaining a promotion and the process should not be seen as a punitive exercise but a genuine opportunity for reflection and improvement.

THE REFLECTIVE PRACTICE REVIEW PROCESS STEPS

Practice Requiring Improvement - *underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics*

Reflective Practice Review Process – *the new Part of the Regulations and guidance setting out the process that should be followed for handling Practice Requiring Improvement*

Participating Officer – *the police officer whose actions or behaviour are subject to the Reflective Practice Review Process*

Reviewer *–the person who is conducting the Reflective Practice Review Process who is either the line manager or supervisor of the participating officer or another officer or staff member who is senior to the participating officer*

Reflective Practice Review Discussion – *A discussion between the reviewer and the participating officer to discuss the identified Practice Requiring Improvement and related circumstances, to identify lessons learned and set out actions to be taken in order to respond to, and prevent a reoccurrence of, the identified Practice Requiring Improvement*

Reflective Review Development Report – *A report following a Reflective Practice Review Discussion setting out a summary of the matter, a summary of the discussion, the actions/next steps to be taken by the individual officer, the reviewer and the police force, lessons learned and a specified period for reviewing matters.*

Referral

13.40 Following a referral, the matter will be handled through the new Reflective Practice Review Process set out in Part 6 of the Conduct Regulations. This guidance underpins and supports the aims of that process.

13.41 Following referral by the appropriate authority the matter will effectively be handed over to the line manager / supervisor to be handled locally with the participating officer. Unless the matter is referred back to the appropriate authority it will be progressed through to conclusion locally. The core procedural steps are outlined in Part 6 of the Regulations, with supporting guidance below. Because of the nature of this process, it is intended to be flexible and adaptable to allow those conducting the process to tailor it according to their local arrangements and the nature of the issues under consideration.

13.42 Officers have the opportunity to engage and input at every stage of the process, during any fact finding, at the discussion stage (or when providing an account during any prior investigation), and in agreeing the written report that sets out the response to the issue and the action to be taken. This will provide the officer with the opportunity to reflect, provide an account and comment on the process, the conclusions that are reached and actions that will be taken.

13.43 Throughout this process there is an important emphasis on fairness and transparency for the participating officer in conducting and finalising the process in a timely and efficient manner. All parties should seek to conduct the process as swiftly as possible so that the matters can be dealt with at the earliest opportunity to the satisfaction and benefit of all involved. Resolving issues and taking action swiftly will often lead to greater satisfaction and a more positive outcome than lengthy proceedings or significant delays which can undermine and limit the benefit of the reflection, learning and actions taken.

Information for participating officer

13.44 The participating officer will be given information, whether orally or in writing, that the matter has been referred to be handled under this process so that they are aware of the start of the process, what the issues are and how it will be handled. This is required by **Regulation 67** and should be used to explain to the participating officer why the process is taking place, details of what is being considered and invite the participating officer to provide an account. This is distinct from and separate to Regulation notices (**Regulation 17** notices) for formal investigations. Where an account has previously been given e.g. during the course of a previous investigation, it may not be necessary to require a further account, unless the participating officer wishes to provide further detail or clarification.

13.45 The participating officer should be reminded at this stage that the Reflective Practice Review Process does not amount to disciplinary proceedings and cannot result in a disciplinary sanction or outcome. The reviewer should also briefly explain the stages in the process and what it is intended to achieve.

13.46 The account requested from the officer might include for example—

a) what actions, or decisions not to act, were taken,
b) the effect of such actions or decisions not to act,
c) what went well and what went less well,
d) whether the officer has identified any lessons to learn from the matter,
e) any actions the officer has subsequently taken in relation to the matter.

13.47 The participating officer should provide an account requested within 5 working days of an invitation to do so, unless a longer period is agreed with the reviewer, for example if the officer is on leave, not working during that period or other circumstances agreed with the reviewer.

13.48 The purpose of this account is for the participating officer to provide their views on the matters that will be discussed during the process and to begin reflecting on the circumstances, actions and behaviours that contributed to the matters that are under discussion. The participating officer should approach this with openness, setting out their interpretation of events, along with any reflections and consideration about what could have been done better.

Fact-finding Stage

13.49 Once the officer has been informed, the reviewer will be able to make some enquiries about the matter that has been referred and may take reasonable and proportionate steps so that they are appropriately informed by relevant information and background. The reviewer should not seek to conduct a detailed or protracted investigation but simply to gather facts and essential pertinent information swiftly and effectively to provide for a fuller understanding of the context and circumstances of the matters being discussed. This should be light touch and limited in its scope.

13.50 Such enquiries must be relevant to the purpose, which is to establish the facts of the matter subject to the review process and allow for a meaningful discussion. This should be as efficient and effective as possible and completed in a timely fashion.

13.51 In most cases, much of this will relate predominantly to information that is already held in the form of a complaint or allegations or documents that the appropriate authority had in deciding how the matter should be handled. It may be that some additional fact finding is needed to understand the circumstances of the issue.

13.52 As part of this the reviewer might, for example:

- request relevant information from the appropriate authority linked to the complaint or allegation,
- as above, invite the participating officer to provide an account,
- where absolutely necessary, request an account from another individual involved or witness, if appropriate,
- consider any other relevant information that is readily available.

13.53 Where a matter has already been investigated under the Conduct Regulations or Schedule 3 to the 2002 Act, the reviewer should generally limit fact-finding to a consideration of the report of the investigation and any account provided by the participating officer.

Referral back to the appropriate authority

13.54 At any time the reviewer may seek advice or input informally from the Professional Standards Department before a formal referral for reassessment is made or as a matter of course in pursuit of guidance and advice in accordance with local arrangements.

13.55 If during the course of the fact finding, substantial new evidence comes to light that suggests that the matter is more serious than had previously been assessed, the reviewer should contact the appropriate authority to discuss whether a further severity assessment or for consideration as to whether a formal investigation of a misconduct issue is required.

13.56 Where a matter is referred to the appropriate authority, the authority may decide to make a further severity assessment as set out in **Regulation 68(3)** of the Conduct Regulations:

a) if the appropriate authority does not make a decision or determination or makes a further severity assessment, and assesses that the conduct, if proved, would amount to Practice Requiring Improvement the reviewer must continue to proceed with the Reflective Practice Review Process that has been commenced.

b) if the appropriate authority makes a further severity assessment and makes an assessment other than that the conduct, if proved, would amount to Practice Requiring Improvement, the case must be dealt with in accordance with Part 3 of the Regulations and no further steps may be taken under the Reflective Practice Review Process. At this stage a formal investigation would be triggered.

13.57 As outlined in previous sections, any account or statement given during the course of the Reflective Practice Review Process will not be admissible as evidence for the purposes of disciplinary proceedings. Whilst an account or admission may be used as a trigger for referral to the appropriate authority, it could not be relied upon for the purposes of subsequent disciplinary proceedings (See paragraphs 13.28 to 13.36).

Discussion Stage

13.58 Following completion of the fact-finding stage, the reviewer will invite the participating officer to attend a Reflective Practice Review Discussion and inform the participating officer of the time and place of the discussion, which should take place as soon as reasonably practicable.

13.59 This stage is all about having a constructive dialogue between the reviewer and the participating officer to work through the issues that have been identified, reflect on what has happened and seek to identify what actions should be taken to put the issues right and prevent a reoccurrence, as well as identifying any learning for the individuals involved and the organisation.

13.60 It is important for reviewers to consider the fullest circumstances of what has occurred and what may have influenced an individual's behaviour or actions that are subject to the Reflective Practice Review Process. This could include the surrounding operational circumstances and also whether there are or were welfare considerations and wider factors including the participating officer's personal circumstances that affected behaviour, particular during stressful periods of life both inside and outside of policing. When discussing these issues and the circumstances, it is important to take into consideration the 'whole person' and consider the human element.

13.61 It is important to bear these circumstances in mind and to potentially explore with the individual whether there are areas where additional support or welfare referrals may be

needed. As well as through opportunities for further training and improvement, an early intervention in this way can be seen as a positive experience to address underlying issues. Such steps can improve the situation for both the individual officer, members of the public and colleagues whilst preventing future behaviour or situations arising that could lead to more formal action.

13.62 In policing, there can often be limited opportunities to explore welfare issues or personal circumstances outside of work that may be affecting an individual's health, both mental or physical, which may be impacting on their performance or behaviours in work. Whilst these circumstances cannot excuse behaviour that falls short of expectations, solely addressing the symptoms (e.g. individual actions or one-off events) in isolation may miss the opportunity to address the root cause or understand the underlying circumstances that contributed to an individuals' actions, behaviour, mental state or stress levels. These issues should be handled sensitively and with due care and consideration.

13.63 The discussion should include:

a) a discussion of the Practice Requiring Improvement and related circumstances that have been identified,
b) an account of the matter from the participating officer,
c) reflection by the participating officer and the reviewer on any initial learning,
d) whether there are any wider circumstances affecting the individual either within the force or their personal life that may benefit from additional support or intervention,
e) a consideration of whether the behaviour or actions of the participating officer complied with the Code of Ethics,
f) identifying whether any person, including a member of the public or complainant, has been adversely affected by the matter and, if so, the nature and extent of the impact on that individual and on the reputation of the police force,
g) identifying any lessons to be learnt and actions to be taken by the participating officer, to address the matter and prevent a reoccurrence,
h) identifying any lessons for the line management or the organisation of the participating officer.

13.64 As part of the discussion the actions proposed may include:

- proportionate remedial or restorative action, which might include meeting, apologising to or engaging with a member of the public or another officer,
- training,
- mediation,
- a learning and development action, identified by the reviewer or participating officer,
- shadowing other officers and staff,
- mentoring by other officers and staff,
- more regular management or performance conversations, or other forms of closer supervision,

- referral to support services or additional welfare interventions where there are wider circumstances involving personal difficulties or mental and physical health that could have contributed to their behaviour,
- reminding the officer of their professional responsibilities including the importance of the principles set out in the Code of Ethics,
- other proportionate action.

13.65 It is important that any action taken is constructive, serves a clear purpose and is intended to address the issue or behaviour that has occurred by providing either a learning opportunity, support, restorative steps or other corrective actions.

13.66 Where, from the discussion the reviewer and participating officer are satisfied that there has been sufficient learning and that no further steps are needed, it might be that no further action is taken other than to agree that the matter that led to the referral is not repeated. Any such decision would need to be recorded and a rationale provided for why a course of action (or no action) has been taken.

13.67 There will also be circumstances where a more supportive and welfare focused response will be the most helpful and appropriate response where this can assist in addressing the underlying root cause that contributed or was the driving factor behind the issues that have been considered. Ultimately the process is about identifying the cause of the issue under scrutiny and bringing about positive behavioural change that can be achieved through support and positive intervention, as well as through corrective and educational interventions.

13.68 Where appropriate, consideration should include whether an apology is fitting, particularly if there is a member of the public (or another officer/member of staff) who has been adversely affected by the issues being considered. Acknowledging mistakes, expressing contrition and being open and honest about when things have gone wrong, as well as considering the impact on members of the public, has a significant role in maintaining public confidence. A personal apology or one on behalf of the force and other restorative steps can be particularly helpful in moving forward and resolving an issue to the satisfaction of a member of the public.

13.69 In the vast majority of cases, it would be anticipated that there would be some reflection and learning that has taken place which will need to be evidenced, whether for the participating officer, reviewer or force.

Reflective Review Development Report

13.70 Following the discussion phase a report will be produced which should summarise the issues that have been discussed, what actions will be taken and the learning identified for the individual and the organisation.

13.71 Specifically it should contain:

- a summary of the issue and any relevant background circumstances,
- a summary of the Reflective Practice Review Discussion,
- key actions to be undertaken within a specified time period,
- any lessons identified for the participating officer,

- any lessons identified for line management or organisation of the participating officer,
- a specified period of time for reviewing the report and the actions taken.

13.72 A copy of the report will be sent to the appropriate authority by the reviewer. It is good practice for the reviewer to highlight any lessons for line management or the organisation of the participating officer within the report. A copy of the report, together with a note of the review of the report and of actions taken, will then be retained on the participating officer's record and be discussed as part of the participating officer's performance and development review during the 12 month period following agreement of the report.

13.73 Where the reviewer is content that any actions outlined in the report have been taken and all concerns have been addressed, this will end the Reflective Practice Review Process.

THE ROLE OF THE FORCE AND THE WIDER ORGANISATION

13.74 One of the key considerations of the Reflective Practice Review Process is not only the learning for individuals and line managers but also for the force as a whole and the wider police service. Senior officers and command teams have an important role in capturing feedback and learning to help support wider organisational learning and continuous improvement.

13.75 A key element of this will be to support the development of feedback mechanisms within forces and across the sector to help make sure that appropriate learning is captured and where necessary relevant actions and steps taken within the force to make wider changes, prevent a reoccurrence and support prevention by working with officers and staff in different parts of the organisation. There may be occasions where there is insufficient information from the complaint alone for the appropriate authority to decide whether referral to the Reflective Practice Review Process is the most reasonable and proportionate outcome. In these circumstances, it would be considered good practice to conduct some low-level scoping or fact-finding to assist in this decision-making.

13.76 Reports that are produced at the end of the process will be sent to the appropriate authority, who will be responsible for taking note and where appropriate acting upon any recommended learning for the organisation as a whole. On receipt of a Reflective Review Development Report, the appropriate authority should not intervene in the outcomes of this report but provide an overall oversight of the process. Line managers and business areas must take responsibility to take action where appropriate, including where there is local learning and actions needed in response to a report.

13.77 Ultimately it will be for forces to determine how to coordinate learning for the wider force and lessons learned across the organisation but as the central point in the process, the appropriate authority and PSDs will need to play a key role in this. This is in line with the increasing focus beyond misconduct investigations and disciplinary proceedings to organisational learning, development and performance improvement more broadly to support a learning culture within force. The individual, organisation and the public should ultimately benefit from that which has been identified during the Reflective Practice Review Process.

PRI ARISING FROM A COMPLAINT FROM A MEMBER OF THE PUBLIC

13.78 This section deals specifically with referrals of Practice Requiring Improvement following a complaint from a member of the public. A complaint may raise issues that are about the behaviour of an individual officer(s) and best dealt with through the Reflective Practice Review Process alongside other issues that are outside the scope of the process (for example wider service issues, or matters simply requiring an explanation to the complainant). In such cases, the referral of an officer to the Reflective Practice Review Process will form part of the handling of that complaint. It will be in addition to the exploration and, where possible, resolution of those other issues through whatever reasonable and proportionate means is most appropriate to their nature.

13.79 Following the referral to the Reflective Practice Review Process, where a member of the public is involved, this should not end the contact with the member of the public. Steps should be taken to seek a view from the member of the public about what has happened from their perspective and what an appropriate response might be giving the complainant the opportunity to be engaged in the reflective process. It will be important for their views to be taken into account during the Reflective Practice Review Process, so what they have complained about is effectively considered and, where possible, resolved. This is in addition to any steps being taken with the member of the public to resolve issues they have complained about that fall outside the Reflective Practice Review Process.

13.80 As well as communicating to the complainant that the outcome of the handling of their complaint is via the Reflective Practice Review Process, the progress and outcome of the Reflective Practice Review Process should also be communicated, in accordance with **Regulation 33 of the Complaints Regulations.** This should explain what has happened as well as what action has been taken as part of the Reflective Review Development Report and information about any learning identified as a result of the complaint.

13.81 This would not necessarily involve the report being shared with the member of the public in full, unless it is felt that doing so would support resolving the issue to the satisfaction of the complainant and there are no significant issues raised by the parties involved that suggest it should not be disclosed.

13.82 In terms of the action taken, this could include, for example, a meeting with the complainant, an explanation or potentially an apology from the participating officer where it is appropriate.

13.83 The Director General must also be notified of the outcome of any Reflective Practice Review Process following an investigation under the 2002 Act, as set out in **Regulation 37** of the Complaints Regulations.

Right of Review for a Complainant

13.84 As with all complaints from a member of the public, there will be a right of review (previously known as an appeal) at the outcome of the handling of a complaint which was dealt with under the provisions of Schedule 3 (with the exception of **paragraphs 18 or 19**). Whether a matter has been referred to be dealt with under the Reflective Practice Review Process, following either a formal investigation under Schedule 3 (where it has been determined that there is no case to answer) or without a formal investigation (in circumstances where it is determined that there is no indication that disciplinary proceedings would be justified), the right to review will occur after the decision to refer

the matter into the Reflective Practice Review Process. The complainant must be notified of the decision to refer and the right to review within 5 working days, as set out in **Regulation 34(2)(b)** of the Complaints Regulations, and has 28 days to exercise that right, as set out in **Regulation 29** of the Complaints Regulations.

13.85 In the vast majority of cases, it is expected that any right to review will not delay the Reflective Practice Review Process from taking place. Such a process is designed to identify opportunities for learning and improvement, both personally and organisationally, and regularly delaying this process could minimise its effectiveness.

13.86 The complainant should be given the opportunity to be engaged in the Reflective Practice Review Process, irrespective of whether they decide to exercise their right to review or not and should continue to be updated every 4 weeks until conclusion, as set out in **Regulation 34** of the Complaints Regulations. This would ordinarily be once the Reflective Review Development Report has been created as opposed to all of the actions completed. Steps should be taken to seek the views of the complainant and ensure that they are aware of what the Reflective Practice Review Process entails. Early, thorough explanations will help to inform the complainant in deciding whether to exercise their right to review.

13.87 Where the reasonable and proportionate handling of a complaint is for it to be dealt with through the Reflective Practice Review Process, then it must be handled under Schedule 3 without a formal investigation. The referral into the Reflective Practice Review Process will constitute the outcome of the complaint and as such the complainant's right to review arises at that stage. In these circumstances the review body will normally be the local policing body who may make recommendations following the review, which could include a recommendation that the matter be formally investigated. This right to review may be exercised where the complainant feels that the Reflective Practice Review Process is not the correct route for their complaint. In limited circumstances, for example where the complaint has been made about the conduct of a senior officer, the IOPC will be the relevant review body - see Chapter 18 of the IOPC statutory guidance on the police complaints system. There is no right of review where a complaint was formally investigated, the matter brought to misconduct proceedings, and the person chairing misconduct proceedings referred the matter (after reaching findings) to the Reflective Practice Review Process.

ESCALATION ROUTES

13.88 As outlined above, there may be circumstances where the matter requires escalation either because the participating officer is not fully engaging in the process, or if there is repeat occurrence.

13.89 As set out in **Regulation 71** of the Conduct Regulations, if the reviewer considers that the participating officer 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 officer related to the matter, the Regulations allow the reviewer to refer the matter for assessment by the appropriate authority, for a determination on how the matter should be handled, which may include referral through the Performance Regulations as a performance issue.

13.90 If the participating officer is not satisfied with how the process has been conducted, they have the option of raising the issue or concerns with the appropriate authority to consider whether there have been any issues with the way the matter has been handled.

ROLE OF THE APPROPRIATE AUTHORITY

13.91 The appropriate authority has a significant responsibility in making decisions and referrals in relation to these cases but ultimately responsibility falls to local line managers and supervisors to lead and conduct this process with input from the appropriate authority as appropriate.

13.92 It is also the responsibility of the appropriate authority to oversee the operation of this process and be satisfied that the processes and Regulations are being handled and delivered effectively by those involved. It is important the appropriate authority considers the feedback from individual reports and also ensures accountability in relation to the agreed actions and steps to be taken in action plans as part of this overarching oversight role.

13.93 It is also the responsibility of appropriate authorities, Professional Standards Departments and HR to provide support to line managers and supervisors who are conducting these processes, to provide advice and guidance on how these should be conducted and the procedural steps involved. Providing this support can give those who are leading the processes greater confidence and make sure the right steps are taken, in the right way. Police forces should have subject matter experts and points of contact available to provide ongoing advice and informal guidance about the handling of matters undergoing these processes – as well as other procedures set out in respective Regulations.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEEDINGS: CONTENTS

This section contains guidance about procedures brought in accordance with the Police (Performance) Regulations. It outlines the general principles that should be followed when considering or conducting performance and attendance related proceedings. It provides detailed guidance about the manner in which formal proceedings should be brought for first, second and third stage meetings for UPP.	Page number
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SECTION 5: PERFORMANCE AND ATTENDANCE PROCEDURES

CHAPTER 14 INTRODUCTION AND GENERAL

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The types, purpose and procedures for managing performance and attendance and consequent proceedings

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Introduction
- Informal action
- Disability and commencing/reconsidering UPP
- Stages of UPP
- Improvement notices and action plans
- Improvement notice extensions and suspensions
- Multiple instances of unsatisfactory performance
- Interaction with police complaints system
- Meetings following investigation under Schedule 3 to the 2002 Act
- Information provided to the Director General
- Attendance at each stage of the procedures and ill-health
- Medical retirement under the Police Pensions Regulations
- Retirement under Regulation A19 of the Police Pensions Regulations 1987 and Regulation 20 of the Police Pensions Regulations 2006 and the 30+ and the 30+ Plus schemes
- Recording under UPP

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers
- All Police Officers line managers
- Police Friend representing an officer
- Police Professional Standards Departments
- Police HR Departments

INTRODUCTION

14.1 This section is designed to help line managers and police officers manage performance and attendance and understand how and when to use the formal procedures in the Performance Regulations to address unsatisfactory performance or unsatisfactory attendance. 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. Where it is appropriate to take informal action, line managers are encouraged to do so.

14.2 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 will be different from those in performance cases.

14.3 The aim of the procedures is to improve performance and attendance in the police service and they are intended to be positive and supportive. All such procedures should be dealt with in a timely manner, while maintaining confidence in the

procedures. Early intervention by line management is often the best practice and the guidance begins by discussing ways in which an informal approach might help resolve performance and attendance issues at an earlier stage as part of regular line management conversations and supervisory activity. Performance procedures should be applied fairly in both a non-discriminatory and non-adversarial way and matters should be dealt with in the strictest confidence.

14.4 In general terms, the test of a good outcome will be improvement in performance and attendance. There will, however, be cases where it will be appropriate for managers to take formal action and the procedures are outlined in this section.

14.5 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 an officer believes that they are being unfairly treated, they have available appeal options that exist at each stage of the UPP.

14.6 An 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.

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

INFORMAL ACTION

14.8 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. The principles outlined below cover the position when a line manager first becomes aware of some unsatisfactory aspect(s) of the officer's performance or attendance and is dealing with the issue as an integral part of normal line management responsibilities. Where a line manager considers that a police officer's performance or attendance shows signs that it might begin to be below the satisfactory standard expected, they should act swiftly and informally to discuss and understand the causes and how support might be introduced to help improve the performance or attendance through a normal line management meeting or discussion. This action should be undertaken as soon as possible, rather than waiting for the next scheduled performance management conversation. Minor lapses below the standards expected should be dealt with via normal management activity. This should be done before moving to formal channels.

14.9 Informal action would usually be through a meeting arranged with the officer concerned. That meeting should be a positive and informal discussion aimed at highlighting and exploring the perceived shortcomings in performance, relating to specific incidents or omissions which have occurred. It should encourage improvement to the expected standards, objectives or work plans agreed as part of ongoing progress clearly setting out how the officer has not met the relevant

expectations and what steps can be taken to improve. Development reviews might be used to support the discussion.

14.10 The emphasis should be on constructive feedback and on finding ways for the officer to improve and for the improvement to be sustained. This may involve the agreement of additional support, guidance and/or training plans.

14.11 The line manager should listen to what the officer has to say about the issue. The discussion may highlight evidence that there are underlying causes such as personal problems or issues wider than the matter at hand that need to be resolved independently. Should the meeting establish that the performance problems are related to the officer's personal or domestic life, appropriate welfare interventions including counselling or other support mechanisms should be considered (see Chapter 5 on the Officer Concerned). If the officer has or may have a disability, their line manager should take particular account of this. Redeployment may also be considered where the issue stems from a personality clash or there is another appropriate reason for a change of duties, in consultation with appropriate HR advisers.

14.12 It is good practice to make a note of the meeting and for a summary of the key points of the discussion, as well as any actions and deadlines, to be recorded and communicated to the officer concerned promptly following the meeting. This should be noted on the officer's Personal Development Record (PDR) or equivalent and kept updated with any improvements to performance or attendance. Managers should be able to demonstrate that they have considered whether management interventions are appropriate before moving to the formal procedure.

14.13 It may be appropriate to indicate to the officer that if there is no, or insufficient, improvement, then the matter will be dealt with at a more formal level. A reasonable period of time should be given for the officer to improve before moving to the UPP, as appropriate.

DISABILITY AND COMMENCING/RECONSIDERING UPP

14.14 Initiating the formal stages of the Performance Regulations is in the discretion of the police officer's line manager (**Regulation 15**). Before commencing the procedure, at any stage, the line manager should actively consider whether they should apply their discretion to do so. If the police force concerned knows that the police officer is disabled within the meaning of s.6 of the Equality Act 2010 (or considers that the officer may be) then active consideration should be given to whether to commence the formal stages of the Unsatisfactory Performance Procedures (UPP) at all.

14.15 Particular consideration should be given to the nature and circumstances of the police officer's disability and an individual assessment made as to whether the officer's treatment is justified and proportionate. Line managers should also consider the need for implementing reasonable adjustments compliant with the requirements of the Equality Act 2010. 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. It may be that, with reasonable adjustments put into place, UPP are appropriate for an officer with a disability. The line manager should consider whether the formal procedures will be beneficial and assist a person with a disability. At all times, the line manager should be conscious

of the methods by which improvement is achieved under the Performance Regulations, and the time limits set for achieving such improvement. The line manager should consider whether it is fair to apply the formal procedures to an officer with a disability.

14.16 In many cases, however, it will be appropriate to initiate the UPP in respect of an officer with a disability. Yet, even where initiating the procedure is appropriate, the use of the formal procedures and the methods used to seek to improve performance or attendance should be kept under review in light of the officer's disability.

14.17 Where an officer's attendance or performance is seriously impaired because of a disability, it is essential that the line manager and the force should keep under consideration whether the UPP is appropriate at all, or whether ill-health retirement is a more appropriate option. In order to ascertain the correct procedure for a disabled or potentially disabled officer, medical evidence may be required. See paragraph 19.25 for guidance on ill-health and medical retirement.

STAGES OF UPP

14.18 UPP has 3 potential stages, each of which has a different meeting composition requirement and different possible outcomes.

14.19 Most cases identified as unsatisfactory performance will be referred to a first stage meeting. Subsequent stages can then follow if the terms of an improvement notice are not met and performance continues to be unsatisfactory.

14.20 In accordance with **Regulation 24**, an officer can be referred directly to a second stage meeting where, following a formal investigation and a decision that there is no case to answer, the appropriate authority:

a) assesses that a matter should be referred to be dealt with as a performance matter *and*
b) assesses that there are reasonable grounds, based on evidence from an investigation to conclude that the officer concerned has demonstrated a serious inability or serious failure to perform the duties of their rank or role to a satisfactory standard or level, such that a referral to a second stage meeting is appropriate *and*
c) having consulted the officer concerned and their line manager or second line manager, is satisfied that the officer concerned has been given a reasonable opportunity to address the relevant inability or failure to perform, but has failed to make a sufficient improvement.

14.21 An officer can also be referred directly into a second stage meeting by the Director General. The Director General may make a recommendation under **paragraph 23(5A)(e) or paragraph 27(3A)** of Schedule 3 to the 2002 Act that the case should go directly to the second stage, omitting the first stage, and the Director General, if the appropriate authority does not give effect to this recommendation, may direct that this action is taken under **paragraph 27(4).** These powers are part of the Director General's wider discretion to make recommendations and directions as the Director General sees fit.

14.22 In accordance with **Regulation 32**, an officer can also be referred directly to a third stage meeting where there is an assessment of unsatisfactory performance amounting to gross incompetence.

14.23 Gross incompetence means a serious inability or serious failure of a police officer to perform the duties of their rank or role to a satisfactory standard or level to the extent that dismissal would be justified, without taking account of the officer's attendance in considering whether the officer has been grossly incompetent.

14.24 A line manager may ask a HR professional or police officer with experience of UPP and independent of the line management chain, to attend a UPP meeting to advise the line manager on the proceedings at the first stage meeting. The line manager may also get this advice prior to the first stage meeting if they have queries about the process.

14.25 The second line manager may also have an advisor in respect of the second stage meeting. For stage three meetings, a HR professional, police officer, counsel or solicitor may attend the meeting to advise the panel on the proceedings.

UPP Stage	Referral Step	How to be dealt with	Outcome
First stage	Unsatisfactory performance	First stage meeting	• Written improvement notice
Second stage	Following a first stage meeting: Where there has been a written improvement notice but the officer has not demonstrated sufficient improvement Direct referral to second stage: Where there has been a formal investigation and unsatisfactory performance is identified and the appropriate authority is satisfied that the officer has been provided the opportunity to improve but has not done so.	Second stage meeting	• Final written improvement notice
Third stage	Following a second stage meeting: following a final written improvement notice where improvement has not been sufficient. Direct referral to third stage: on grounds of gross incompetence.	Third stage meeting	• Dismissal with notice, • Dismissal with immediate effect, • Reduction in rank, • Extension of period of final written improvement notice, • Issue of a final written

			improvement notice, • Redeployment to alternative duties.

14.26 Within performance procedures it is good practice, to seek to apply the following principles where possible according to the circumstances of the individual case and officer involved:

a) clearly and constructively explain concerns/issues, providing factual examples and how these can be addressed,
b) allow the officer the opportunity to provide any explanations (which should be subsequently followed up and checked, where appropriate),
c) outline the impact these concerns are having on the area of work,
d) ensure that some positive feedback is provided, where possible,
e) together explore any potential causes and any special circumstances. The officer's views of all matters involved should be taken fully into account, and any additional or alternative evidence considered,
f) acknowledge any factors beyond the officer's control,
g) explain any required standards or expectations which are not being met,
h) together discuss and agree any follow up action,
i) consider any need for external support (see Chapter 5 on the officer concerned),
j) explain that insufficient sustained improvement, within the time-scales defined, may lead to more formal action,
k) outline formal stage if improvement is not reached/situation not remedied (refer to relevant procedure),
l) seek advice from HR, if necessary,
m) end on an optimistic but realistic note.

IMPROVEMENT NOTICES AND ACTION PLANS

14.27 At the first and second stages, where it is found that the officer's performance or attendance is unsatisfactory, an improvement notice will be issued. Improvement notices require an officer to improve on their performance or attendance and must state:

a) in what respect the officer's performance or attendance is considered unsatisfactory,
b) the improvement in performance or attendance required to bring the officer to an acceptable standard,
c) a "specified period" within which improvement is expected to be made and
d) the "validity period" of the written improvement notice.

14.28 The "specified period" of an improvement notice is a period determined by the manager conducting the meeting within which the officer must improve their performance or attendance. The manager must consider any representations regarding this made by or on behalf of the officer. It is expected that the specified

period for improvement would not normally exceed 3 months although it may be appropriate to specify a longer or shorter period for improvement, depending on the nature and circumstances of the case. The specified period should not exceed 12 months.

14.29 The "validity period" of an improvement notice describes the period of 12 months beginning with the date of the notice within which the 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 UPP may be used – see Chapter 16.

14.30 The improvement notice should also inform the 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 the officer may be required to attend the next stage of the procedures.

14.31 Improvement notices must be accompanied by the written record of the meeting and a notice informing the officer of their right to appeal against the finding or terms of the improvement notice (or both of these). The officer must also be informed of their relevant right of appeal.

14.32 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.

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

a) identify any weaknesses which may be the cause of unsatisfactory performance or attendance,
b) 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,
c) specify a period within which actions identified should be followed up and
d) set a date for a staged review of the officer's performance and/or attendance.

IMPROVEMENT NOTICE EXTENSIONS AND SUSPENSIONS

14.34 As per **Regulation 10** of the Performance Regulations, the officer concerned may apply for an extension of the "specified period" at any time in the procedures. The appropriate authority must consider such an application and extend the period if it considers it appropriate. This will allow some flexibility for unforeseen circumstances e.g. where the officer has not had sufficient time to improve due to emergency deployment to other duties.

14.35 In extending a specified period, consideration should be given to any periods of extended absence from the officer's normal role e.g. long periods of pre-planned holiday leave or study leave. The extension should not lead to the improvement period exceeding 12 months unless the appropriate authority is satisfied that this is

appropriate due to exceptional circumstances. The reasons for the extension should be recorded.

14.36 The period for improvement under an improvement notice and the validity period of an improvement notice do not include any time that the officer is on a career break. For example, if the officer is issued with an improvement notice with a specified period of 3 months and takes career leave 2 months into the notice, whenever the officer returns they will have one month left of the specified period and 10 months left of the validity period of the notice, as per **Regulation 11** of the Performance Regulations.

MULTIPLE INSTANCES OF UNSATISFACTORY PERFORMANCE

14.37 An officer can move to a later stage of UPP only in relation to unsatisfactory performance or attendance which is similar to, or connected with, the unsatisfactory performance or attendance referred to in any previous written improvement notice.

14.38 Where failings relate to different forms of unconnected and unrelated unsatisfactory performance or attendance, the UPP should be commenced at the first stage, unless the failing constitutes gross incompetence. If more than one UPP is commenced relating to different failings identified at different times, the finding and outcome of each should be made without prejudice to the others.

14.39 There may, however, be circumstances where procedures have been initiated for a particular failing and an additional failing comes to light prior to the first stage meeting. It is possible to consolidate the two issues at the first stage meeting, provided there is sufficient time prior to the meeting to comply with the notification requirements. 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.

INTERACTION WITH POLICE COMPLAINTS SYSTEM

14.40 A police officer may be referred to an unsatisfactory performance meeting or third stage meeting for gross incompetence as a result of a complaint or conduct matter.

14.41 The Independent Office for Police Conduct (IOPC) has the power to recommend and ultimately direct that proceedings are taken under the Performance Regulations in certain circumstances following an investigation under the 2002 Act.

14.42 Where a case has been referred to a third stage meeting for gross incompetence as a result of an investigation of a complaint or a conduct matter which was subject to local, directed 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.

14.43 Where the officer concerned objects to the complainant or interested person, or any person accompanying them, 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, to withdraw while the submission is made. The person conducting or chairing the

proceedings should make the officer aware of the right to object in these circumstances.

14.44 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 42(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.

14.45 The IOPC has the right to attend the proceedings to make representations in any case where an independent or directed investigation was undertaken, or where the IOPC made a recommendation or direction to the appropriate authority with regard to the proceedings.

14.46 In any case dealt with under the UPP as a result of a 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.

MEETINGS FOLLOWING INVESTIGATION UNDER SCHEDULE 3 TO THE 2002 ACT

14.47 The appropriate authority may direct the officer's line manager to take action following an investigation under Schedule 3 to the 2002 Act, in the following circumstances, as set out in **Regulation 12** of the Performance Regulations:

a) the appropriate authority receives an investigator's report submitted under **paragraph 22 or 24A** of Schedule 3 and in making a determination under **paragraph 24(6) or paragraph 24C(4),** considers that the performance of the officer is unsatisfactory,
b) the appropriate authority has a duty under **paragraph 23(5B)** to comply with a direction from the Director General of the IOPC to bring disciplinary proceedings, following a determination under **paragraph 23(5A)(b)** that a person's performance is unsatisfactory,
c) the appropriate authority accepts a recommendation under **paragraph 25(4C)(c)** that misconduct proceedings of the form specified are brought,
d) the appropriate authority accepts a recommendation under **paragraph 25(4E)(c)** that misconduct proceedings of the form specified are brought,
e) the appropriate authority accepts a recommendation under **paragraph 27(3A)** in relation to the unsatisfactory performance of an officer or
f) the appropriate authority has a duty under **paragraph 27(4)(b)** to comply with a direction to give effect to a recommendation.

14.48 Where the officer concerned has already received a final written improvement notice in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination or recommendation relates and the validity period of the final written improvement notice has not expired, the line manager must require the officer to attend a third stage meeting – see Chapter 17.

14.49 Where the officer concerned has a written improvement notice in relation to unsatisfactory performance which is similar to or connected with unsatisfactory performance to which the determination or recommendation relates and the validity period of the written improvement notice has not expired, the line manager must require the officer to attend a second stage meeting – see Chapter 16.

14.50 The line manager must comply with a direction given by the appropriate authority and the usual procedures as set out in this section for each stage of the meeting should be followed.

14.51 In addition to these procedures, where documents need to be provided to the officer concerned, they should include, subject to the harm test, the investigator's report and any determination or recommendation made by the Director General.

14.52 If the appropriate authority does not make the determination regarding consideration of the performance of the officer concerned within 15 working days beginning with the day after receipt of the investigator's written report, the appropriate authority must inform the officer of their reasons for this.

INFORMATION PROVIDED TO THE DIRECTOR GENERAL

14.53 The Director General must be provided relevant information regarding the officer concerned where:

a) the investigation is a **paragraph 18 or 19** investigation (directed or independent investigations), or
b) the investigation is a **paragraph 16** investigation (the appropriate authority investigating on their own behalf) and the circumstances set out in **Regulation 13(1)(b)** of the Performance Regulations apply.

14.54 In these circumstances, the appropriate authority must ensure that the Director General receives copies of all written records, written improvement notices, final written improvement notices, and other relevant notifications as per **Regulation 13** of the Performance Regulations.

ATTENDANCE AT EACH STAGE OF THE PROCEDURES AND ILL-HEALTH

14.55 Subject to the conditions set out in the Regulations, officers must attend meetings convened in accordance with the Performance Regulations. Where an officer does not attend, the proceedings can continue (and conclude) in the officers' absence.

14.56 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 an officer unfit for duty without affecting their ability to attend a meeting. However, where medical advice is sought and the officer has been deemed incapacitated, the meeting may be deferred until they are sufficiently improved to attend.

14.57 A meeting will not be deferred indefinitely because the officer is unable to attend, although every effort should be made to make it possible for the officer to attend if they wish 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 officer is well enough to attend,

b) if the officer suffers from a physical injury – a broken leg, for instance – it may be possible to hold the meeting at a location convenient to them.

14.58 If the officer informs the panel chair in advance that they are unable to attend a meeting on grounds which the chair considers reasonable, the chair may allow the officer to participate in the meeting by video link or other means. In these circumstances, a police friend will always be permitted to attend the meeting to represent the officer as normal (and, in the case of a gross incompetence third stage meeting, the police officer's legal representative where appointed).

14.59 Where, despite such efforts having been made and/or the meeting having been deferred, the officer either persists in failing to attend the meeting or continues to be unable 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 officer. The person conducting the meeting must judge the most appropriate course of action.

14.60 Nothing in this guidance should be taken to suggest that, where a police officer's medical condition is found to be such that they would normally be retired on medical grounds, the UPP should prevent or delay retirement.

MEDICAL RETIREMENT UNDER POLICE PENSIONS REGULATIONS

14.61 The Police Pensions Regulations 1987, the Police Pensions Regulations 2006 and the Police Pensions Regulations 2015 provide that where a local policing body is considering whether an officer is permanently disabled, or permanently medically unfit, it shall refer the issue to the selected medical practitioner (SMP) for a decision.

14.62 Some cases of unsatisfactory attendance may raise the need to consider whether the officer is permanently disabled to perform the duties of a police officer and within the meaning of the Police Pensions Regulations 1987,2006 or 2015. In such cases, this guidance should be read in conjunction with the Police Negotiating Board Joint Guidance on Improving the Management of Ill-Health.

14.63 Where an officer is referred to the SMP for consideration of permanent disablement or permanent medical unfitness under the Police Pensions Regulations, no action shall be commenced or continued under the Performance Regulations with regard to the unsatisfactory attendance of an officer until the issue of permanent disablement has been considered and the report of the SMP has been received by the local policing body.

14.64 Where an officer appeals to a Medical Appeal Board against a decision of the SMP that they are not permanently disabled or permanent medically unfit or to a Crown Court against a decision of the local policing body not to refer the permanent disablement questions to an SMP, no action shall be commenced or continued under the Performance Regulations with regard to the unsatisfactory attendance of the officer until the appeal has been resolved.

14.65 Action can, however, be taken under the UPP 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 UPP. Medical advice from the force medical advisor (FMA) may also be necessary.

14.66 For further guidance on medical retirement procedures, see: http://www.ome.uk.com/Document/Default.aspx?DocumentUid=516068B4-40A6-4AF6ACCE-E0AEDC8A6768

RETIREMENT UNDER REGULATION A19 OF POLICE PENSIONS REGULATIONS 1987 AND REGULATION 20 OF THE POLICE PENSIONS REGULATIONS 2006 AND THE 30+ AND THE 30+ PLUS SCHEMES

14.67 Regulation A19 of the Police Pensions Regulations 1987 and Regulation 20 of the Police Pensions Regulations 2006 provides for the compulsory retirement of police officers who have built full pensionable service (30 years in the 1987 scheme and 35 years in the 2006 scheme) and are entitled to an immediate full pension. Such police officers can be made to leave the force where their retention would not be in the general interests of force efficiency. This does not apply to members of the Police Pension Scheme 2015, where there is no concept of full pensionable service.

14.68 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 UPP should be used in such cases.

14.69 The UPP can also be used where 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).

RECORDING UNDER UPP

14.70 Records of any part of the UPP should not be taken into account after an improvement notice has ceased to be valid. Equally, where an 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.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEDURES

CHAPTER 15 FIRST STAGE MEETINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The preparation, purpose and procedure of first stage meetings held under the Performance Regulations.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Preparation and purpose
- At the first stage meeting
- Procedure following the first stage meeting
- Assessment of performance or attendance

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Police officers
- Line managers and second line managers
- Police friends representing an officer
- Police Professional Standards Departments
- Police HR Departments

PREPARATION AND PURPOSE

15.1 Having considered the use of informal action (see paragraph 14.7), where a line manager considers that an officer's performance or attendance is unsatisfactory and decides that UPP is the most appropriate way of addressing the matter, the line manager will notify the officer in writing that the officer is required to attend a first stage meeting. As per **Regulation 16** of the Performance Regulations, this notification should include:

a) details of the procedures for determining the date and time of the meeting,
b) a summary of the reasons the line manager considers that the officer's performance or attendance is unsatisfactory,
c) the possible outcomes of a first stage, second stage and third stage meeting,
d) that a human resources professional or a police officer, with experience of UPP and independent of the line management chain, may attend the meeting to advise the line manager on the proceedings,
e) that, if the officer agrees, any other person specified in the notice may attend that meeting,
f) that prior to the meeting, the officer must provide the line manager with any documentation that the officer intends to rely on at the meeting, and,
g) the officer's rights i.e. right to seek advice from a representative of their staff association and to be accompanied and represented at the meeting by a police friend.

15.2 Where the officer concerned raises an objection to the manager holding a first stage meeting e.g. a potential conflict of interest or serious personality clash, every effort should be made to resolve these issues prior to the meeting being held to avoid a subsequent appeal. Where an agreement or resolution cannot be reached

the line manager, second line manager or supervisor is ultimately not prevented from moving forward with the first stage meeting.

15.3 In these circumstances, the meeting can be held by the manager and if the officer considers that they have grounds for appeal, the objection of the officer should be handled through that procedure. This is without prejudice to the power of a senior manager to appoint another person to carry out any of the functions of the line manager or the second line manager if appropriate – see **Regulation 9** of the Performance Regulations.

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

15.5 Where the matter relates to an issue that has previously been handled under the Reflective Practice Review Process and a Reflective Review Development Report has been produced under **Regulation 70** of the Conduct Regulations in relation to a matter similar to or connected with the unsatisfactory performance discussed at this meeting, the notice must be accompanied by a copy of that report.

15.6 In advance of the meeting, the officer must provide the line manager with any documents on which the officer intends to rely in support of their case.

15.7 Any document or other material not submitted in advance of the meeting may be considered at the meeting but at the sole discretion of the line manager. 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.

15.8 Where any such document or other material is permitted to be considered, a short adjournment may be necessary to enable the line manager or the officer, as the case may be, to read 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 particularly lengthy or complex.

15.9 The purpose of the meeting is to hear evidence of the unsatisfactory performance or attendance and to give the officer the chance to put forward their views. It is also an opportunity to hear of any factors that are affecting the officer's performance or attendance and what the officer considers can be done to address them.

15.10 The line manager should explain that there are potentially three stages to the procedures and that the maximum outcome of a first stage meeting is an improvement notice and the maximum outcome of a second stage meeting is a final improvement notice. The line manager will also explain that if the procedure is continued to the final stage, dismissal, a reduction in rank, redeployment to alternative duties or an extended improvement notice are possible outcomes.

15.11 Wherever possible, the date and time of the meeting should be agreed between the line manager and the officer. However, where agreement cannot be reached, the line manager must specify a date and time. If the police officer or their police friend is not available at the date or time specified by the line manager, the 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.

15.12 Once the date for the meeting is fixed, the line manager must give the officer a written notice 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.

AT THE FIRST STAGE MEETING

15.13 As set out at **Regulation 17** of the Performance Regulations, at the first stage meeting the line manager will:

a) explain to the officer the reasons the line manager considers that the performance or attendance of the police officer is unsatisfactory,
b) provide the officer with the opportunity to make representations in response,
c) provide the police friend, if there is one, with an opportunity to make representations and
d) listen to what the police officer, and their police friend, have to say, ask questions and comment as appropriate.

15.14 The police friend may address the meeting as per the provisions of **Regulation 5** on the role of the police friend.

15.15 The line manager may adjourn the meeting at any time if they consider it is necessary to do so e.g. where information which needs to be checked by the line manager emerges during the course of the meeting.

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

15.17 Where having considered any representations by the officer and/or their friend, the line manager finds that, on the balance of probabilities, there has been unsatisfactory performance or attendance on the part of the officer, the line manager shall:

a) inform the officer in what respect their performance or attendance is considered unsatisfactory,
b) inform the officer of the improvement that is required in their performance or attendance,
c) inform the officer that, if a sufficient improvement is not made within the period specified by the line manager, they may be required to attend a second stage meeting, in accordance with **Regulation 22** of the Performance Regulations,
d) inform the officer that they will receive a written improvement notice, and where appropriate an action plan,
e) inform the officer that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice, the officer may be required to attend a second stage meeting.

15.18 The line manager may recommend as appropriate that the officer seeks assistance regarding their health and/or welfare, including a referral to Occupational Health, where appropriate.

15.19 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).

PROCEDURE FOLLOWING THE FIRST STAGE MEETING

15.20 As per **Regulation 18** of the Performance Regulations, following the meeting, the line manager must prepare a written record of the meeting and a written improvement notice, where the line manager found unsatisfactory performance or attendance. The written record and any improvement notice must be sent to the officer as soon as reasonably practicable once prepared. The written record supplied to the officer should comprise a summary of the proceedings at that meeting.

15.21 Any written improvement notice must set out the information related to the outcome of the meeting given to the officer, state the period for which it is valid and be signed and dated by the line manager. An improvement notice must be accompanied by a notice informing the officer of their right to appeal and the name of the person to whom an appeal should be sent. The notice must also inform the officer of their right to submit written comments on the written record of the meeting and the procedure for doing so.

15.22 The officer may submit written comments on the written record within 7 working days after the date on which the officer received it – unless an extension has been granted by the line manager following an application by the officer. Any written comments provided by the officer should be included with the note. However, if the officer has exercised their right to appeal against the finding or outcome of the first stage meeting, the officer may not submit comments on the written record.

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

15.24 In most circumstances, it will be appropriate to incorporate an action plan, setting out the actions which should assist the police officer to perform their duties to an acceptable standard. If possible, the action plan should be agreed, either at the meeting or at a later time specified by the line manager.

15.25 It is best practice in drafting improvement notices and action plans for forces to follow SMART principles (i.e. specific, measurable, achievable, relevant, time-bound). This will ensure that there are identifiable objectives with clear milestones set out, making improvement notices and action plans usable and realistic.

15.26 It is expected that the officer will cooperate with implementation of the action plan and take responsibility for their own development and improvement. Equally, the officer's line manager must ensure that any actions to support the officer to improve are implemented. These matters ultimately fall to be considered as part of the improvement period and potentially subsequent stages of performance proceedings in judging whether the officer has demonstrated sufficient improvement in line with expectations set out in the improvement notice.

ASSESSMENT OF PERFORMANCE OR ATTENDANCE

15.27 The performance or attendance of the officer should 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 officer any concerns within this period regarding the officer's performance or attendance and offer advice and guidance where appropriate.

15.28 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, a HR professional, or both, must formally assess the performance or attendance of the officer during that period.

15.29 If the line manager considers that the officer's performance or attendance is satisfactory, the line manager must notify the officer in writing of this. The notification should also inform the officer, that whilst their performance or attendance is 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 officer falls below an acceptable level within the remaining period.

15.30 If the line manager considers that the officer's performance or attendance is still unsatisfactory, the line manager must notify the officer in writing of this. The line manager must also notify the officer that they are required to attend a second stage meeting to consider these ongoing performance or attendance issues, under **Regulation 22** of the Performance Regulations.

15.31 Where the officer has improved their 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 the second stage of the procedures.

15.32 In these circumstances, the line manager must notify the officer in writing of their view that the officer's performance or attendance is unsatisfactory as the officer has failed to maintain improvement. They must also notify the police officer that they will be required to attend a second stage meeting to discuss their failure to maintain a satisfactory standard of performance or attendance.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEDURES

CHAPTER 16 SECOND STAGE MEETINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The preparation, purpose and procedure of second stage meetings held under the Performance Regulations.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Preparation and purpose
- Holding a second stage meeting without a first stage meeting
- At the second stage meeting
- Procedure following the second stage meeting
- Assessment of performance or attendance

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Police officers
- Line managers and second line managers
- Police friends representing an officer
- Police Professional Standards Departments
- Police HR Departments

PREPARATION AND PURPOSE

16.1 With the exception of cases where **Regulation 24** applies, initiation of the second stage of UPP 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.

16.2 As per **Regulation 23** of the Performance Regulations, where, at the end of the period specified in an improvement notice, the line manager finds that the officer's performance or attendance has not improved to an acceptable standard during that period or that the officer has not maintained an acceptable level of performance or attendance during the validity period of the notice, then the second line manager must notify the officer in writing that they are to attend a second stage meeting with the second line manager. The notification should include:

a) the details of the procedures for determining the date and time of the meeting,
b) summary of the reasons why the line manager considers the 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 with experience of UPP and independent from the line management chain may attend the meeting to advise the second line manager on the proceedings,
f) that if the officer agrees, any other person specified in the notice may attend the meeting,
g) that prior to the meeting the officer must provide the second line manager with any documentation they intend to rely on in the meeting,

h) the officer's rights i.e. their right to seek advice from a representative of their staff association and to be accompanied and represented at the meeting by a police friend.

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

16.4 In advance of the meeting, the officer must provide the second line manager with any documents which they intend to rely on in support of their case.

16.5 Following the same procedure for first stage meetings, 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.

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

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

16.8 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 officer or their police friend is not available at the date or time specified by the second line manager, the 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.

16.9 Once a date for the meeting is fixed, the second line manager must send the officer a notice in writing of the date, time and place of the second stage meeting.

HOLDING A SECOND STAGE MEETING WITHOUT A FIRST STAGE MEETING

16.10 In some circumstances, it may be appropriate to hold a second stage meeting without the officer having been through a first stage meeting. This procedure is set out in **Regulation 24** of the Performance Regulations.

16.11 An officer can be referred directly to a second stage meeting following a formal investigation carried out under the 2002 Act or the Conduct Regulations where a determination has been made that there is no case to answer or that misconduct proceedings will not be brought in circumstances and the appropriate authority assesses that:

a) the matter should be referred to be dealt with as a performance matter and

b) there are reasonable grounds, based on evidence from an investigation to conclude that the officer concerned has demonstrated a serious inability or serious failure to perform the duties of their rank or role to a satisfactory standard or level, such that a referral to a second stage meeting is appropriate and
c) having consulted the line manager or second line manager of the officer concerned and the officer concerned, the officer concerned has been given a reasonable opportunity to address the relevant inability or failure to perform, but has failed to make a sufficient improvement.

16.12 Where the appropriate authority determines that a second stage meeting without a first stage meeting is appropriate, they must notify the officer and their line manager as soon as reasonably practicable. This notification should include:
a) the fact that the appropriate authority has determined that a second stage meeting is appropriate and the reasons why,
b) the reason why the officer's performance has been assessed as unsatisfactory,
c) a summary of the evidence in support of the appropriate authority's conclusion,
d) that the officer is required to attend a second stage meeting.

16.13 The officer's line manager will then require that the officer attend the second stage meeting and proceed with the procedure as set out below.

16.14 The Director General, under the provisions set out within Schedule 3 to the 2002 Act, may also refer a case directly into the second stage, where appropriate. The wide discretion to determine whether "disciplinary proceedings" should be brought is set out in **paragraph 24(5A)(b)** of Schedule 3. "Disciplinary proceedings" in this context includes performance proceedings.

AT THE SECOND STAGE MEETING

16.15 As per **Regulation 25** of the Performance Regulations, at the second stage meeting the second line manager will:
a) explain to the officer the reasons why they have been required to attend a second stage meeting,
b) provide the officer with the opportunity to make representations in response,
c) provide the officer's police friend, if they have one, with an opportunity to make representations, and,
d) listen to what the officer (and/or their police friend) has to say, ask questions and comment as appropriate.

16.16 The police friend may address the meeting as set out in **Regulation 5.**

16.17 The second line manager may adjourn the meeting at any time if they consider it is necessary to do so e.g. where information which needs to be checked by the second line manager emerges during the course of the meeting.

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

16.19 Where having considered any representations by the officer and/or their police friend, the second line manager finds that, on the balance of probabilities, there has been unsatisfactory performance or attendance on the part of the officer, either

during the period specified in the written improvement notice or during the validity period of the written improvement notice, the manager will:

a) inform the officer in what respects their performance or attendance is considered unsatisfactory,
b) inform the officer of the improvement that is required in their performance or attendance,
c) inform the officer that, if a sufficient improvement is not made within the period specified by the second line manager, they may be required to attend a third stage meeting,
d) inform the officer that they will receive a final written improvement notice, and where appropriate an action plan, and,
e) inform the officer that if the sufficient improvement in their performance or attendance is not maintained during the validity period of such notice, they may be required to attend a third stage meeting, in accordance with **Regulation 30** of the Performance Regulations.

16.20 The line manager may recommend as appropriate that the officer seeks assistance regarding their health and/or welfare.

16.21 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 officer's normal role.

PROCEDURE FOLLOWING THE SECOND STAGE MEETING

16.22 As per **Regulation 26** of the Performance Regulations, as soon as reasonably practicable following the meeting, the second line manager will prepare a written record of the meeting and, where they found that the performance or attendance of the officer was unsatisfactory, a final written improvement notice. The written record and any improvement notice will be sent to the officer as soon as reasonably practicable after they have been prepared. The written record supplied to the officer should comprise a summary of the proceedings at that meeting.

16.23 The final 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 officer of their right to appeal and the name of the person to whom the appeal should be sent. The notice must also inform the officer of their right to submit written comments on the written record of the meeting and of the procedure for doing so.

16.24 The final written improvement notice should also follow the SMART principles as set out in paragraph 15.25.

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

outcome of the second stage meeting, the officer may not submit comments on the written record.

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

16.27 In most circumstances, it will be appropriate to incorporate an action plan, setting out the actions which should assist the police officer to perform their duties to an acceptable standard e.g. attending training or seeking welfare or medical advice. If possible the action plan should be agreed, either at the meeting or at a later time specified by the line manager. It is expected that the officer will cooperate with implementation of the action plan and take responsibility for their own development and improvement. Equally, the officer's managers must ensure that any actions to support the officer to improve are implemented.

ASSESSMENT OF PERFORMANCE OR ATTENDANCE

16.28 It is expected that the 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 officer any concerns that the line manager has during this period as regards their performance or attendance and offer advice and guidance where appropriate.

16.29 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, a HR professional, or both, must formally assess the performance or attendance of the officer during that period.

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

16.31 If the line manager considers that the officer's performance or attendance is still unsatisfactory, the line manager must notify the officer in writing of this. The notification must also inform the officer that they are required to attend a third stage meeting to consider these ongoing performance or attendance issues, under **Regulation 30** of the Performance Regulations.

16.32 If the officer has improved their 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 the third stage of the procedures.

16.33 In these circumstances, the line manager must notify the officer in writing that the officer's performance or attendance is unsatisfactory as they have failed to maintain a sufficient improvement and that as a consequence the officer is required to attend

a third stage meeting to discuss this failure to maintain a satisfactory standard of performance or attendance.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEDURES

CHAPTER 17 THIRD STAGE MEETINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The preparation, purpose and procedure of third stage meetings held under the Performance Regulations.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Preparation and purpose
- Gross incompetence third stage meetings
- Panel membership and procedure
- Objection to panel members
- Special constables and third stage meetings
- Meeting dates and timeframes
- Procedure on receipt of notice of third stage meeting
- Witnesses and evidence
- At the third stage meeting
- Postponement and adjournment of third stage meeting
- Assessment of final and extended final written improvement notices issued at third stage
- Assessment of improvement notices issued at third stage

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Police officers
- Line managers and second line managers
- Police friends representing an officer
- Police Professional Standards Departments
- Police HR Departments

PREPARATION AND PURPOSE

17.1 With the exception of gross incompetence cases, initiation of the third stage of UPP must be for matters similar to or connected with the unsatisfactory performance or attendance referred to in the final improvement notice.

17.2 Where, at the end of the period specified in the final written improvement notice, the line manager finds that the officer's performance or attendance has not improved to an acceptable standard during that period or that the 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 officer in writing that they are required to attend a third stage meeting to discuss these issues. As per **Regulation 31** of the Performance Regulations, as soon as reasonably practicable thereafter, the senior manager must give a notice to the officer:

a) that the meeting will be conducted by a panel appointed by the appropriate authority,
b) informing them of the procedures for determining the date and time of the meeting,
c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory,
d) informing them of the possible outcomes of a third stage meeting,

e) that if the outcome is dismissal, the officer's details will be added to the police barred list,
f) that a HR professional or a police officer, with experience of UPP and independent from the line management chain, may attend to advise the panel on the proceedings,
g) 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,
h) where the officer is a special constable, that a member of the special constabulary will attend the meeting to advise the panel,
i) that if the officer agrees, any other person specified in the notice may attend,
j) informing the officer of their rights i.e. their right to seek advice from a representative of their staff association and to be accompanied and represented at the meeting by a police friend.

17.3 The notice must also include copies of related documentation relied upon by the line manager in support of the view that the 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 their right to representation by a police friend.

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

17.5 Where the police officer has reached the third stage following the first and second stages (i.e. not a gross incompetence meeting), the possible outcomes of this third stage meeting are:

a) redeployment,
b) reduction in rank,
c) dismissal (with a minimum of 28 calendar days' notice) or
d) extension of a final improvement notice (in exceptional circumstances).

17.6 Where the panel grants an extension to the final improvement notice, they will specify a new period within which improvement in 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

17.7 As per **Regulation 32** of the Performance Regulations, there may be circumstances where the appropriate authority considers the performance (not attendance) of the 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" (defined below and in **Regulation 4**). 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.

Gross incompetence: *means a serious inability or serious failure of a police officer to perform the duties of the officer's rank or the role the officer is currently undertaking to a*

satisfactory standard or level, without taking account of the officer's attendance, to the extent that dismissal would be justified.

17.8 The appropriate authority must also initiate third stage proceedings for gross incompetence where directed or recommended to do so by the Director General of the Independent Office for Police Conduct (IOPC) following a **paragraph 18 or 19** investigation held under Schedule 3 to the 2002 Act.

17.9 Where the appropriate authority determines it is appropriate to initiate the procedures at this stage, then the officer must be informed in writing that they are required to attend a third stage meeting to discuss their performance.

17.10 As per **Regulation 33** of the Performance Regulations, where the appropriate authority has informed the officer that they need to attend a third stage only meeting in relation to gross incompetence, it must, as soon as reasonably practicable, send the 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 officer's performance is considered to constitute gross incompetence,
d) the possible outcomes of a third stage only meeting,
e) that if the outcome is dismissal, the officer's details will be included on the police barred list,
f) that a HR professional and an officer with experience of UPP and independent from the line management chain, may attend to advise the panel on the proceedings,
g) 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,
h) where the officer is a special constable, that a member of the special constabulary will attend the meeting to advise the panel,
i) where relevant under the Performance Regulations, the Director General or a person nominated by them to attend as an observer may attend,
j) where relevant under the Performance Regulations, any complainant may attend,
k) that the Director General may, where relevant under **Regulation 42(10)** of the Performance Regulations, direct that whole or part of the proceedings are held in public,
l) that, if the officer agrees, any other person specified in the notice may attend,
m) the officer's rights: their right to seek advice from a representative of their staff association and to be accompanied at the meeting by a police friend.

17.11 In addition, the notice must also set out that the officer has the right to be legally represented at the third stage meeting by a relevant lawyer of the officer's choice, as per **Regulation 6** of the Performance Regulations.

17.12 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.

17.13 The notice must be accompanied by the documentation relied upon by the appropriate authority in support of its view that the officer's performance constitutes gross incompetence. Where the case has been referred to third stage proceedings

following the recommendation or direction of the Director General, the notice should also be accompanied by the investigator's report under **paragraph 22 or 24A** of Schedule 3 to the 2002 Act and the determination or recommendation of the Director General – see **Regulation 32** of the Performance Regulations.

17.14 The purpose of the meeting is for the panel to hear the evidence of the gross incompetence and to give the officer and their representative the opportunity to make representations on the matter.

17.15 As per **Regulation 46** of the Performance Regulations, the appropriate authority will explain that the officer is required to attend the third stage meeting and that the possible outcomes of the third stage meeting are:

a) redeployment to alternative duties,
b) the issue of a final written improvement notice,
c) the extension of a final written improvement notice,
d) reduction in rank (with immediate effect),
e) dismissal (with notice or immediate effect) or
f) 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

17.16 Following the procedure in **Regulation 34** of the Performance Regulations, the panel must comprise a panel chair and two other members and be appointed by the appropriate authority of the police force of the officer concerned. At least one of the three panel members must be a police officer and one should be an HR professional. The panel will be made up of the following:

a) **chair:** Senior police officer or senior HR professional,
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.

17.17 All the panel members must be of at least the same rank or equivalent, in the opinion of the appropriate authority, as the officer concerned.

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

17.19 No panel member may be an interested party i.e. a person whose appointment could reasonably give rise to a concern as to whether they could act impartially under the procedures, or a person who has previously been involved in the decision-making process.

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

a) which 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.

17.21 As soon as the appropriate authority has appointed a third stage panel, it must send the officer written confirmation of the names of panel members.

OBJECTION TO PANEL MEMBERS

17.22 Under **Regulation 35** of the Performance Regulations, the 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 the date of receipt of the notification of the names of the panel members. The police officer must include the ground of their objection to the panel member(s) in that submission.

17.23 The appropriate authority must inform the officer in writing whether it upholds or rejects an objection to a panel member.

17.24 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 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.

17.25 The officer may object to the newly appointed panel member in the same way, whereupon the appropriate authority must follow the procedure described above.

SPECIAL CONSTABLES AND THIRD STAGE MEETINGS

17.26 In cases where the officer is a special constable, 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 which may have a bearing on the officer's performance or attendance can be taken into account.

17.27 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.

17.28 The special constable advisor will not form part of the panel and will not have a role in determining whether or not the officer's performance or attendance is unsatisfactory.

17.29 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

17.30 As per **Regulation 38** of the Performance Regulations, subject to an extension, any third stage meeting must take place no later than 30 working days after the date that the notification has been sent to the officer. Within that timeframe, wherever possible, the meeting date and time must be agreed between the panel chair and the officer.

17.31 However, where agreement cannot be reached the panel chair must specify a time and date. If the officer or their police friend is not available at the date or time specified by the panel chair, the 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.

17.32 If the panel chair considers it to be in the interests of fairness to do so, they may extend the 30 working day period within which the meeting must take place and the reasons for any such extension must be notified in writing to both the appropriate authority and the officer.

17.33 Where the Director General is entitled to attend to make representations under **Regulation 40(2),** or to nominate a person to attend as an observer under **Regulation 42(5),** of the Performance Regulations, the Director General must also be given notice of the date, time and place of the meeting.

17.34 As soon as a date for the meeting is fixed, the panel chair must send the 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

17.35 As per **Regulation 36** of the Performance Regulations, 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, or, where that period is extended by the panel chair for exceptional circumstances, such extended period, the officer must provide the appropriate authority with:

a) written notice of whether or not they accept that their performance or attendance has been unsatisfactory or that they have been grossly incompetent, as the case may be,
b) where the officer accepts that their performance or attendance has been unsatisfactory or that they have been grossly incompetent, any written submission they wish to make in mitigation.

17.36 Where the officer does not accept that their performance or attendance has been unsatisfactory or that they have been grossly incompetent or where they dispute part of the matters referred to in the notice that they have received, the officer must provide the appropriate authority with a written notice of:

a) the matters they dispute and their account of the relevant events and
b) any arguments on points of law they wish to be considered by the panel.

17.37 The officer shall provide the appropriate authority and the panel with a copy of any document they intend to rely on at the third stage meeting.

WITNESSES AND EVIDENCE

17.38 Following the procedure set out in **Regulation 36** of the Performance Regulations, before the end of 3 working days beginning with the first working day following the officer's notice to the appropriate authority, 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.

17.39 Where agreement has not been reached as above, the officer shall send to the appropriate authority their list of witnesses.

17.40 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 must consider the list of proposed witnesses and determine which, if any, witnesses should attend the third stage meeting – as per **Regulation 37** of the Performance Regulations.

17.41 The panel chair can determine that persons not named in the list should attend as witnesses.

17.42 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 they will:

a) in the case of an officer, cause the witness to be ordered to attend the third stage meeting,
b) in any other case, cause the witness to be given notice that their attendance at the third stage meeting is necessary, providing relevant details including the date, time and place of the meeting

17.43 Where a witness attends to give evidence, any questions to that witness should be made through the panel chair. This does not prevent the panel chair allowing questions to be asked directly if they feel it appropriate.

17.44 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.

AT THE THIRD STAGE MEETING

17.45 As per **Regulation 44** of the Performance Regulations, at the third stage meeting the panel chair will conduct the meeting and will:

a) explain to the officer the reasons why they have been required to attend a third stage meeting,
b) provide the officer with the opportunity to make representations in response,
c) where the case is one of gross incompetence and the officer has opted for legal representation, provide the officer's legal representative with the opportunity to make representations,
d) unless the officer is entitled to be, and has chosen to be, legally represented, provide the officer's police friend, if they have one, with an opportunity to make representations,
e) listen to what the officer (and/or their police friend) has to say and ask questions as appropriate.

17.46 The panel may adjourn the meeting at any time if they feel it is necessary to do so, include to deliberate on any of the matters being considered, the finding or the sanction imposed.

17.47 Having considered any representations by either the officer and/or their police friend or (where applicable) the officer's legal representative, the panel will come to a finding as to whether or not the performance or attendance of the officer has been unsatisfactory or whether or not their behaviour constitutes gross incompetence, as the case may be.

17.48 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.

17.49 Where the panel make a finding of unsatisfactory performance or attendance or gross incompetence, before deciding on the appropriate outcome, the panel must have regard to the personal record of the officer and any mitigation or references put forward on behalf of the officer.

17.50 The panel must prepare their decision in writing. Where the panel find that the officer's performance or attendance has been unsatisfactory or that they have 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.

17.51 In deciding on an outcome, the panel must have regard to the record of police service of the officer and any other evidence or representations made at the meeting.

17.52 As soon as reasonably practicable after the conclusion of the meeting, the panel chair must send a copy of the decision to the officer and the line manager. However, the officer must be given written notice of the finding of the panel within 3 working days beginning with the first working day after the conclusion of the meeting.

17.53 Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence the copy of the decision sent to the officer must also be accompanied by a notice informing them of the circumstances in which and the timeframe within which they may appeal to a police appeals tribunal.

17.54 Individuals who are dismissed after UPP will be included on the barred list. See Chapter 21 for further information on the effect of this.

17.55 A verbatim record of the meeting must be taken. The police officer must, on request, be supplied with a copy of the record.

POSTPONEMENT AND ADJOURNMENT OF A THIRD STAGE MEETING

17.56 As per **Regulation 39** of the Performance Regulations, if the panel chair considers it necessary or expedient, they may direct that the third stage meeting take place at a different time, or date and time, from that originally notified to the officer.

17.57 The panel chair's alternative time, or date and time, may fall after the period of 30 working days.

17.58 In the event that the panel chair postpones a third stage meeting, they must notify the following relevant parties in writing of their reasons and the revised time and place for the meeting:

a) the officer concerned,
b) other panel members,
c) the appropriate authority and
d) the Director General, where the Director General has given a direction that the case be referred to a third stage meeting.

ASSESSMENT OF FINAL AND EXTENDED FINAL IMPROVEMENT NOTICES ISSUED AT THIRD STAGE

17.59 As per **Regulation 47** of the Performance Regulations, where the 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 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 officer any concerns that they have during this period as regards the officer's performance or attendance and offer advice and guidance where appropriate.

17.60 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 officer during that period. The panel chair must then inform the officer in writing of the panel's conclusion following assessment i.e. whether there has been sufficient improvement in their 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 they are required to attend another third stage meeting.

17.61 If, at the end of the validity period of the final/ extended final improvement notice, the panel considers that sufficient improvement to the officer's performance or attendance has not been made or maintained during this period, the panel chair will inform the officer of the panel's assessment.

17.62 Any such notification to the officer must also include notification that they are required to attend a further third stage meeting.

17.63 Where an officer is required to attend a further third stage meeting, the Performance Regulations shall apply as if they were required to attend that meeting for the first time following a second stage meeting.

17.64 As with the initiation of the first and second 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.

17.65 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 Performance Regulations.

17.66 As soon as reasonably practicable after the appointment of any new panel member(s), the officer must be notified in writing of the changes in panel membership. The officer will have the opportunity to object to any new panel member(s) subject to the restrictions set out in paragraph 17.22.

17.67 A police officer may only be given an extension to a final improvement notice on one occasion. Therefore, where the officer is required to attend a reconvened third stage meeting and the panel find that the officer's performance or attendance continues to be unsatisfactory, the only outcomes available to the panel are:

a) re-deployment,
b) reduction in rank or
c) dismissal (with notice).

17.68 Reduction in rank is not available for officers who hold the rank of constable, special constables or where the third stage meeting is regarding attendance only.

ASSESSMENT OF IMPROVEMENT NOTICES ISSUED AT THE THIRD STAGE

17.69 In cases where an 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 officer will be the same as that following the first stage.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEEDINGS

CHAPTER 18: APPEALS FROM PERFORMANCE PROCEEDINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The process for appeals from first stage, second stage and third stage proceedings held under the Performance Regulations.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Appeals from first and second stage
- Grounds of appeal
- At the appeal meeting
- Third stage appeals

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers
- All Police Officers line managers
- Police Friend representing an officer
- Police Professional Standards Departments
- Police HR Departments

APPEALS FROM FIRST AND SECOND STAGE

18.1 Officers who have been taken through a first stage meeting are able to appeal against the finding and/or terms of the written improvement notice, as per **Regulation 19** of the Performance Regulations. First stage appeal meetings are conducted by the officer's second line manager.

18.2 Officers who have been taken through a second stage meeting are able to appeal against the finding and/or terms of the final written improvement notice and against the decision to require them to attend the meeting, as per **Regulation 27** of the Performance Regulations. Second stage appeal meetings are conducted by the officer's senior manager.

18.3 Any finding or outcome imposed at a UPP meeting will continue to apply up to the date that the appeal is determined. Regardless of which stage the officer has been taken through, the officer must continue to follow the terms of their improvement notice or final improvement notice and any accompanying action plan pending the determination of the appeal.

18.4 Any appeal should be made in writing to the second line manager (for appeals from first stage meetings) or senior manager (for appeals from second stage meetings) within 7 working days beginning with the first working day following the day of the receipt of the improvement notice and written record of the meeting (unless the period has been extended following an application by the officer). The notice of appeal must clearly set out the grounds and evidence for the appeal.

GROUNDS OF APPEAL

18.5 The grounds for appeal are:

a) that the finding of unsatisfactory performance or attendance is unreasonable,
b) that any of the terms of the written improvement notice or final written improvement notice are unreasonable,
c) that there is evidence that could not reasonably have been considered at the first or second 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 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) second stage meetings only - that the 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.

18.6 These are set out in **Regulation 19** for first stage meetings and **Regulation 27(4)** for second stage meetings.

18.7 The officer may appeal against 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 officer and/or
c) the length of the period specified for improvement by the line manager at the first stage meeting, or second line manager at the second stage meeting.

18.8 The officer has the right to be accompanied and represented by a police friend at this appeal meeting.

18.9 Wherever possible, the meeting date and time should be agreed between the second line manager or senior manager conducting the appeal and the officer. The appeal meeting must take place before the end of 7 working days beginning with the first working day after day on which the notice of appeal is received by the second line manager or senior manager, unless this period has been extended.

18.10 However, where agreement cannot be reached, the second line manager or senior manager must specify a time and date. If the officer or their police friend is not available at the date or time specified, the 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 the day which has been specified, the meeting must be postponed to that time.

18.11 As soon as reasonably practicable once a date for the meeting is fixed, the second line manager or senior manager must send the officer a notice in writing of the date, time and place of the appeal meeting together with the information required to be provided under **Regulation 20** of the Performance Regulations (for first stage appeal meetings) or **Regulation 28** of the Performance Regulations (for second stage appeal meetings).

AT THE APPEAL MEETING

18.12 At the appeal meeting, the second line manager or senior manager will:

a) provide the officer with the opportunity to make representations,
b) provide their police friend, if they have one, with an opportunity to make representations.

18.13 This should follow the process in **Regulation 21** for first stage appeal meetings and **Regulation 29** of the Performance Regulations for second stage appeal meetings.

18.14 Having considered any representations by either the officer and/or their police friend, the second line manager or senior manager may:

a) confirm or reverse the finding of unsatisfactory performance or attendance,
b) confirm or vary the terms of the improvement notice appealed against,
c) *second stage meetings only* - 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.

18.15 The second line manager or senior manager may deal with the officer in any manner in which their manager could have dealt with them at the first or second stage meeting. Where the second line manager or senior manager has reversed the finding of unsatisfactory performance or attendance, they must also revoke the related improvement notice.

18.16 The second line manager or senior manager may adjourn the meeting at any time if they consider it necessary to do so. Within 3 working days beginning with the first working day following the conclusion of the appeal meeting, the officer will be given written notice of the decision made at the appeal meeting. If the second line manager or 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.

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

18.18 Any decision made that changes the finding or outcome of the first or second stage meeting will take effect by way of substitution for the finding or terms appealed against, immediately after the first or second stage meeting.

THIRD STAGE APPEALS

18.19 Following a third stage meeting, a police officer may be able to appeal to a police appeals tribunal. Any finding and outcome of the third stage meeting will continue to apply up to the date that the appeal is determined.

SECTION 5: PERFORMANCE AND ATTENDANCE PROCEEDINGS

CHAPTER 19: ATTENDANCE

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO:

The types, purpose and procedures for managing attendance including responsibilities for health and safety, training and communication and monitoring and reviewing progress.

THIS CHAPTER INCLUDES GUIDANCE ABOUT

- Introduction
- Key principles
- The Attendance Management Procedure
  - Short term absence
  - Long term absence
  - Maintaining contact
  - Facilitating return to work
  - Payment during sickness absence
  - Return to Work interviews
  - Disability
  - Recuperative duties
  - Limited duties
  - Ill health retirement
  - Using Unsatisfactory Performance Procedures (UPP)
  - Medical absence
  - Allocating responsibilities
  - Role of Occupational Health
  - Health and safety
  - Training and communication
  - Monitoring individual progress
  - Audit and review

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- All Police Officers
- All Police Officers line managers
- Police Friend representing an officer
- Police Professional Standards Departments
- Police HR Departments

INTRODUCTION

19.1 The police service is committed to promoting a culture of good attendance and a supportive working environment within police forces. This chapter highlights the key principles that should guide police forces in developing good attendance management policies and practices. 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 (UPP). At the same time, officers have a duty to have due regard to health, safety and welfare and to cooperate with their force arrangements in order to safeguard themselves and others.

19.2 The Performance Regulations define unsatisfactory performance or attendance as "the inability or failure of a police officer to perform the duties of the role or rank they are currently undertaking to a satisfactory standard or level". For unsatisfactory attendance, this would mean an unacceptable level of absence during agreed hours of duty. In the case of lateness, the reasons for the behaviour should be established. Consideration should be given to whether the matter is properly dealt with under the attendance management policy or as an issue of misconduct.

KEY PRINCIPLES

19.3 All forces should develop an approach to and policy for attendance management, which should include:

a) a clear policy, well-publicised and accessible to all with clear aims and objectives,
b) clarification of the roles and responsibilities of individual officers, line managers, human resource managers, occupational health practitioners, health and safety advisors and force medical advisors,
c) support for officers to improve their attendance and assist those who are on sick leave to return to work,
d) ownership of the policy at the chief officer level who should appoint a named individual at a senior level who takes the lead on attendance issues,
e) consultation with staff associations, force medical advisors, occupational health practitioners and health and safety advisors who have a key role in the development and review of attendance management policies and procedures,
f) an appropriate emphasis placed 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,
g) clear and effective communication in relation to attendance management, both generally and in individual cases,
h) clarification of how information will be captured and recorded, locally and on a force wide basis, and this should include the stated recording method[29].

19.4 Forces that effectively manage attendance will adopt a positive, supportive and transparent approach to attendance management that does not unlawfully discriminate. Their policy will demonstrate 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. Policies should be reviewed at stipulated regular intervals and include an equality impact assessment.

19.5 Forces should 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), Fairness at Work, dispute resolution, disability, maternity, workplace stress policies and policies on work-life balance.

THE ATTENDANCE MANAGEMENT PROCEDURE

19.6 The attendance management procedure describes how the objectives of the policy will be achieved in practice, by setting the framework for action to maintain and where appropriate, to improve attendance levels.

[29] 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.

19.7 An attendance management procedure should seek to ensure the following outcomes:

a) 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.

19.8 Forces should take a proactive and supportive approach to managing absence, identifying and tackling any barriers to good attendance. 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,
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 limited 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.

Short-term absence

19.9 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 is also an opportunity to consider whether there are any patterns of absence that give rise to any concern.

Long-term absence

19.10 Long-term absence is defined as absence lasting 28 calendar days or more. Once an individual has been absent from work for 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

19.11 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 of 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 where appropriate to support both the mental and physical welfare of the officer.

19.12 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. Any arrangements should specify the nominated person who is responsible for ensuring contact is maintained.

19.13 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 communications could all be used. A balance needs to be struck so as not to be intrusive whilst demonstrating genuine care for the officer concerned. This consideration should be guided by the individual's preferences and the circumstances on a case by case basis.

19.14 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 cooperate with the advice and services provided by occupational health.

Facilitating Return to Work

19.15 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.

19.16 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. The offer of a discussion with the officer and their representative may assist in the return to work.

Payment during sickness absence

19.17 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 their 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.

Return to work interviews

19.18 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.

19.19 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 sickness record, where this is appropriate, so there can be an open discussion regarding any patterns of absence or other issues affecting their ability to attend regularly, or a need for further intervention or support.

19.20 The return to work interview should:

a) be used to ensure that all documentation (such as medical certificates or self-certification) has been completed,
b) include discussion of the reasons for absence in a non-confrontational way and whether the officer is able to undertake the full range of duties applicable to their role or develop a plan for recuperative duties. Where there is any doubt, the matter should be referred to occupational health for advice,
c) include consideration as to whether, if appropriate, an adjustment could be made to an officer's working environment to enable them to return to work,
d) provide the opportunity for the officer to indicate any areas of concern that may have contributed to their period of absence,
e) include, where appropriate, an update of the officer on any matters of significance that have occurred in their period of absence, which should cover both their own work, and that of the team,
f) be conducted sensitively and in a manner that enables any particular circumstances to be dealt with.

19.21 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 legislation.

Disability

19.22 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 them as such. Paragraph 14.14 onwards refer to the caution that should be exercised in applying the formal processes in the Performance Regulations to a person with a disability.

Recuperative duties

19.23 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 their 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.

Limited duties

19.24 Where the condition is likely to be permanent, a return to work on the basis of limited duties should be considered. Limited 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 limited duties should continue to work full hours, as the limitation 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

19.25 There will be occasions where the medical condition causing the absence will be very serious and potentially with a permanent effect. In such cases, it is essential that consideration of whether the officer is 'permanently disabled' within the definition used in ill-health retirement guidance is undertaken.

Using Unsatisfactory Performance Procedures (UPP)

19.26 Where supportive approaches have failed to improve attendance to acceptable levels, and ill-health retirement is inappropriate, it may be necessary to use the UPP.

19.27 Any decision to use the UPP to deal with unsatisfactory attendance should be taken only after all supportive approaches have been offered in line with force policy. Where the UPP are invoked, the primary aim is to improve attendance. However, one available outcome of the UPP is termination of service. Dismissal as a result of UPP will also carry the consequence of inclusion on the barred list.

MEDICAL ABSENCE

19.28 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 UPP 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.

19.29 Having sought occupational health advice, management should consider whether alternative work is available. If there is some doubt about the nature of the officer's illness or injury, the officer will be informed that they will be examined by a force medical adviser (FMA). If the officer refuses, they will be told in writing that a decision on whether they are subject to UPP will be taken on the basis of the information available. The above will be applied in accordance with forces' own attendance management procedures.

19.30 In accordance with local force attendance management procedures, the line manager and the officer should keep in regular contact. If management wish to contact the officer's doctor, normal force arrangements will be followed.

19.31 The officer should be made aware at the start of the UPP that if they remain unwell and if necessary adjustments cannot be made, dismissal from the force is a possible outcome at the third stage.

ALLOCATING RESPONSIBILITIES

19.32 Chief officers have responsibilities under the Health and Safety at Work etc Act 1974 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.

19.33 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.

19.34 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.

19.35 All managers have a significant role to play by demonstrating their commitment to managing absence and making it a service priority. The development of good practice in managing attendance is encouraged.

Role of Occupational Health

19.36 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.

19.37 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 cooperate with occupational health and/or health and safety advisors as part of the risk assessment process.

19.38 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.

19.39 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 officer's health and the effect it may have on their ability to attend regularly and perform their normal tasks, may refer the officer to occupational health.

19.40 A manager should set out clearly the questions they want 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 their 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 limited 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.[30]

19.41 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

19.42 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 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.

19.43 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

19.44 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,

[30] It should be noted that any officer can be ill-health retired, whether they are a member of the pension scheme or not.

for example conducting a return to work interview in a non-confrontational way and formulating risk assessment and rehabilitation plans.

19.45 All new officers should receive information regarding their individual responsibilities in the attendance management process as part of their induction. 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.

19.46 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

19.47 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.

19.48 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.

19.49 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.

19.50 Nominated staff should be responsible for recording data at the start and end of periods of absence, in addition to the reasons for absence. Managers should also keep written records of any action taken (or not taken) in relation to their officers.

Reviews

19.51 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. Forces may also set locally defined and published review points, to assist managers in identifying patterns of absence and taking appropriate action.

19.52 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.

19.53 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. 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.

19.54 The use of reviews should be non-discriminatory, regularly assessed, and subject to a full equality impact assessment.

AUDIT AND REVIEW

19.55 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.

19.56 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.

19.57 Forces should have a clear and 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,
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 impacts 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.

SECTION 6: FORMER OFFICERS

CHAPTER 20: MISCONDUCT PROCEDURES FOR FORMER POLICE OFFICERS	Page number
SYNOPSIS AND OVERVIEW **THIS CHAPTER RELATES TO:** *The application of the Conduct Regulations to former police officers, the conditions for taking misconduct proceedings and where procedures differ from those for serving officers.*	216
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THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY • Former officers involved in disciplinary processes and proceedings • Legally Qualified Chair Persons • Police Friend representing an officer • Police Professional Standards Departments • Police HR Departments • Counsel for appropriate authorities or former officer • IOPC official (representing the Director General at a hearing)	

INTRODUCTION

20.1 This chapter sets out guidance for investigations and misconduct hearings for former police officers. The Policing and Crime Act 2017 introduced provisions for proceedings to be brought against former officers in order to increase public confidence that action would be taken against former officers who were found to have committed gross misconduct and that they would be prevented from re-joining policing in the future. This ensures that officers are not able to retire or resign to avoid misconduct proceedings.

APPLICATION AND SCOPE

20.2 A former officer falls into the scope of the former officer provisions where they ceased to serve on or after 15 December 2017 and an allegation against them came to light after 21 November 2012.

20.3 It should be noted that the previous set of Police (Conduct, Complaint and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017, known as the 'Former Officer Regulations 2017', comprised a standalone set of Regulations to deal with former officer provisions, modifying and amending the 2012 Regulations. These continue to apply in certain circumstances, as set out in 20.5. The current former officer regime is administered by schedules to the core Regulations (found at Schedule 1 of the Conduct Regulations and Schedule 2 of the Complaints Regulations). The former officer regime applies with modifications to the Conduct Regulations 2020, the Complaints Regulations 2020 and Schedule 3 to the 2002 Act.

20.4 The amendments and modifications to the Conduct Regulations do not apply to cases of misconduct that were taken under Conduct Regulations issued prior to 2012.

20.5 A former officer will be dealt with under the 2020 regime where an allegation in respect of a former officer comes to light on or after 1st February 2020 and the officer ceased to be an officer on or after 15 December 2017 and:

a) the officer ceased to be a police officer after the allegation came to the attention of the relevant body,
b) the allegation came to the attention of the relevant body within 12 months of the person ceasing to be an officer or
c) the allegation came to the attention of the relevant body more than 12 months after the person ceased to be an officer and the Director General has made a special determination under Part 1A of the Conduct Regulations (as inserted by Schedule 1 of the Conduct Regulations) that the taking of disciplinary proceedings would be reasonable and proportionate.

20.6 There are a couple of exceptions to note:

a) if an allegation that comes to the attention of the relevant body on or after 1st February 2020 relates to a matter in respect of which a pre-commencement allegation (i.e. one made before 1st February 2020) was made and it is still being handled in accordance with the 2012 Regulations or Schedule 3 to the 2002 Act, the allegation will be dealt with under the 2012 regime and not the 2020 regime,
b) but where the Director General determines under section 13B of the 2002 Act that a complaint or matter is to be re-investigated or makes a direction under **section 28A(1) or (4)** of the 2002 Act in relation to a matter on or after 1st February 2020, the 2020 regime will always apply,
c) if the officer ceased to be an officer on or after 15 December 2017 but disciplinary proceedings in relation to the alleged gross misconduct have already been taken under the 2012 regime the case will be considered under the old regime unless the case is a re-investigation that begins not more than 12 months after the person ceased to be a police officer.

20.7 In these circumstances, the date of the allegation is the most relevant, rather than when the conduct is alleged to have occurred. As a result, any new allegation of gross misconduct of an officer who left on or after 15 December 2017, will be captured by these provisions, and an officer who leaves whilst

under investigation for gross misconduct will be subject to the former officer procedures.

20.8 Misconduct procedures are only applicable for former officers where the severity assessment of the conduct (see paragraph 20.18) is one of gross misconduct. This means that 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.

20.9 The modifications 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 serving officers.

FORMER OFFICER CONDITIONS

20.10 For the purpose of misconduct procedures there are three conditions of former officer set out in **Regulation 4** of the Conduct Regulations 2020.

a) **Condition A** will apply where an officer has resigned or retired or made clear their intention to resign or retire (as set out at paragraph 5.34 onwards and formerly restricted by **Regulation 10A** of the Conduct Regulations 2012) after an allegation first comes to the attention of an appropriate authority under the Conduct Regulations. Where the appropriate authority assesses that the allegation amounts to one of gross misconduct, the investigation may begin and lead to a hearing where there is a case to answer for gross misconduct.

b) **Condition B** will apply where an allegation of gross misconduct comes to the attention of an appropriate authority and the former officer had ceased to be a member of a police force for a period not exceeding 12 months before the allegation was made to the force. Where the appropriate authority assesses that the allegation amounts to one of gross misconduct, the investigation may begin and lead to a hearing where there is a case to answer for gross misconduct.

c) **Condition C** will apply where an allegation of gross misconduct comes to the attention of an appropriate authority and the period since the officer left the police force exceeds 12 months, where the Director General makes a special determination under Part 1A of the Conduct Regulations that the taking of proceedings would be reasonable and proportionate. Disciplinary proceedings in Condition C cases are intended to cover only the most serious and exceptional cases of gross misconduct likely to do damage to public confidence in policing.

20.11 A ‘Condition C person’ will be identified by the appropriate authority as such under the circumstances outlined above but no determination will be made at this stage. A special determination will need to be made by the Director General of the Independent Office for Police Conduct (IOPC) under Part 1A of the Conduct Regulations - as described in paragraph 20.57 below – at the

conclusion of the investigation and where there is a case to answer for gross misconduct.

20.12 This determination will follow an investigation under **paragraph 18 or 19** of Schedule 3 to the 2002 Act, following the IOPC's determination of the mode of investigation as described in paragraph 20.29. Where, after examining the level of seriousness and public interest in the case, the IOPC have determined that the investigation should be conducted by the appropriate authority i.e. a local investigation under **paragraph 16** of Schedule 3 to the 2002 Act, a case to answer for gross misconduct may be recorded but will not lead to a special determination or to a misconduct hearing.

20.13 Where Condition, A B or C is met with regard to a former officer, the Conduct Regulations and Complaints Regulations apply with important modifications set out in schedules to those Regulations. Those Regulations, as modified, should be read as if the former officer subject to the allegations were still serving and serving in the position in which they 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 Complaints Regulations and this statutory guidance should be followed with some important differences, as set out below.

POLICE FRIENDS

20.14 A former officer may choose a person to represent them for the purpose of the misconduct proceedings. That person may be:

a) a police officer,
b) a police staff member, or
c) any other person nominated by the officer concerned.

20.15 Where the former officer selects someone outside of the police force 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 they were serving at the time the alleged misconduct took place.

ASSESSMENT OF CONDUCT AND WHETHER FURTHER ACTION IS TAKEN

20.16 As for investigations involving serving officers, the appropriate authority needs to assess the level of the conduct under investigation under **Regulation 14** of the Conduct Regulations. The purpose of the assessment is to decide whether the matter to be investigated is potentially one of 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 fell short of the Standards of Professional Behaviour in a way that was so serious as to justify dismissal. For former officers, this will include a judgment on how the standards should have been met at the time of the conduct.

20.17 In making that assessment, the appropriate authority should look at the conduct in the way described in Chapter 2 of this guidance, examining the circumstances 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 reasonably be drawn from the available evidence. Assessment should also consider foreseeable aggravating and mitigating factors. These considerations should be made with regard to the context of the period in which the alleged conduct took place.

20.18 There are important differences in the severity assessment for a former officer under **Regulation 14** of the Conduct Regulations:

a) the assessment is whether the conduct, if proved, would amount to gross misconduct and for the appropriate authority to take no further action where the assessment is that the conduct does not amount to gross misconduct,
b) the appropriate authority will not assess whether the conduct amounts to misconduct only,
c) the appropriate authority will not assess whether the conduct amounts to Practice Requiring Improvement,
d) the appropriate authority will not assess whether the matter should be referred under the Performance Regulations.

20.19 Where an investigation is taking place under Schedule 3 to the 2002 Act and the Complaints Regulations, the severity assessment is carried out under **Regulation 16** of the Complaints Regulations, with similar differences for former officers.

20.20 Where the initial assessment indicates that the conduct does not amount to gross misconduct, no further investigation may be required and the former officer should be informed. However, in circumstances where the investigation relates to:

a) a Recordable Conduct Matter (under **Regulation 7** of the Complaints Regulations),
b) a complaint from a member of the public (under **Regulation 4** of the Complaints Regulations),
c) a Death or Serious Injury (DSI) matter (under **Regulation 9** of the Complaints Regulations),

the investigation will continue in line with the statutory obligations for such cases. In such cases, although the investigation can continue, this cannot lead to subsequent disciplinary proceedings.

20.21 Where the initial or subsequent 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 20.34. If the assessment is subsequently changed to misconduct, no further investigation may be required unless it falls under the circumstances described in paragraph 20.20.

20.22 Where a matter amounts to misconduct only and is subject to investigation, it will not be subject to special requirements due to the fact that no disciplinary proceedings will be brought. This is regardless of whether an initial assessment indicates that the conduct of the individual former officer does not amount potentially to gross misconduct.

20.23 In all cases where the investigation has begun and subsequently changed to a misconduct matter, it will remain open to forces and the IOPC to determine whether it is proportionate to continue the investigation, even though 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 only lead to referral to a hearing if a fresh assessment is made and new evidence has emerged of gross misconduct.

Assessing whether to proceed because of the level of fitness for disciplinary proceedings or when the force is unable to locate the former officer

20.24 The appropriate authority must not bring disciplinary proceedings if it is satisfied that the former officer is unfit by reason of disability or ill-health or if it has made reasonable enquiries in order to determine the last known address of the officer and has been unsuccessful - see **Regulation 14** as modified. It is important that the appropriate authority in cases involving a former officer assesses the level of fitness of the officer and whether disability or ill health would mean that they should take no further action. It is for the appropriate authority to decide on the level of evidence they require to satisfy themselves that the former officer is unfit for disciplinary proceedings.

20.25 It is worth noting that there are two different stages at which consideration is given as to whether the officer is unfit for disciplinary proceedings to be brought. Under the Conduct Regulations, this is considered at the severity assessment stage by the appropriate authority who considers if they are satisfied that the officer is unfit to face proceedings. The appropriate authority also has the discretion at the **Regulation 23** stage to decide that proceedings should not be brought.

20.26 In investigations brought under **paragraph 16** of Schedule 3 to the 2002 Act, the appropriate authority has discretion at **Regulation 23** of the Conduct Regulations to decide that proceedings should not be brought. The only exception is where such an investigation was of a complaint, there is a review of the outcome of the complaint and the appropriate authority accepts a recommendation of the review body that proceedings be brought (or the Director General directs that proceedings be brought, in cases where the Director General hears the review). In those cases, the appropriate authority has no discretion at **Regulation 23** of the Conduct Regulations (but the review body does have a discretion as to whether to recommend or direct that proceedings be brought).

20.27 In investigations brought under **paragraph 18 or 19** of Schedule 3, the appropriate authority has no such discretion at **Regulation 23** of the Conduct Regulations. However, the Director General has the ability to consider these factors in making their special determination in Condition C cases and, at **paragraph 23** of Schedule 3, is not obliged to decide that proceedings must be taken.

20.28 The former officer should submit written representations supported by medical evidence. As described in Chapter 7, it is for the appropriate authority to assess

the evidence presented to them by the former officer. Where the appropriate authority is not convinced on the basis of evidence available, it should continue with the misconduct proceedings. 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.

Director General of the IOPC determines the form of investigation

20.29 Where a complaint, Recordable Conduct Matter or DSI matter is referred to the IOPC, the Director General will determine the form of investigation under **paragraph 15** of Schedule 3 to the 2002 Act. This can take the form of:

a) an investigation by the appropriate authority on its own behalf (**paragraph 16**),

b) an investigation by the appropriate authority under the direction of the IOPC (**paragraph 18**),

c) an investigation by the IOPC itself (**paragraph 19**).

20.30 The Director General will determine the form of investigation based on the seriousness and public interest in the case.

20.31 In investigations under **paragraph 18 or 19**, the Director General must, at an early stage, make a severity assessment in consultation with the appropriate authority as described in Chapter 7. 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 disciplinary proceedings may be taken against the former officer – and in Condition C cases, a special determination will not be made - but the investigation may continue.

APPOINTMENT OF AN INVESTIGATOR

20.32 The appointment of an investigator into the conduct of a former officer will be made as for serving officers under **Regulation 15** of the Conduct Regulations and **Regulation 12** of the Complaints Regulations. It is particularly important in appointing an investigator 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 their chain of command or line management and may have been in a position where the former officer had influence over the investigator.

20.33 The Regulations therefore require that the investigator should not be appointed where they previously worked, directly or indirectly, under the management of the former officer at the time of the alleged misconduct. Similarly, for former senior officers, an investigator should not be appointed where they were, at the relevant time, the chief officer of the police force concerned, a member of the same police force or serving in the same command of the metropolitan police force, or a designated police volunteer serving in the same police force.

WRITTEN NOTICES

20.34 The investigator will ensure that a written notice is sent to the former officer under investigation as under **Regulation 17** of the Conduct Regulations or

under **Regulation 17** of the Complaint Regulations. This will follow the same process, covered in paragraph 7.34 onwards, as for serving officers with the following modifications:

a) the notice will make it clear that if the allegation of gross misconduct is proved, the officer may be subject to a finding that they would have been dismissed if they had not ceased to be a member of a police force or a special constable,

b) the notice will make it clear that, if the officer is subject to such a finding, they will be included on the barred list and their details may be subject to publication for a period of up to 5 years.

c) the notice will inform the former officer that it may harm their case if they fail to attend an interview which they have been given notice of.

20.35 The language of the notice should be clear and unambiguous as described for serving officers in Chapter 7 and the terms of reference - a description of the main aspects of the investigation - should be included as they would for a serving officer. Responsibility for provision of the notice is as described in Chapter 7. Circumstances for former officers may have changed and serving of the notice in person may not be possible. The alternative of serving the notice by recorded delivery to the last known address should be used but good practice is to verify the former officer's current address and all efforts should be made to locate the former officer. Action should be taken as described in paragraph 20.28 where the former officer cannot be located.

Serving Officer resigns after issue of written notice

20.36 Where a serving officer who is subject to investigation resigns after a written notice has been issued, but before a hearing is held, they become a Condition A former officer for the purposes of the Conduct Regulations. In these circumstances, the appropriate authority will need to consider whether it is appropriate to issue a new notice as set out in Chapter 24.

20.37 Alternatively, the appropriate authority may instead wish to supplement the original notice by informing the officer in writing that they are now subject to disciplinary proceedings as a former officer, rather than a serving officer, given the change in circumstances.

ATTENDING AN INTERVIEW

20.38 An 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 circumstances of the alleged gross misconduct. For the former officer it will provide an opportunity to hear the existing evidence, answer the investigator's questions and put forward their position. The investigator will therefore expect that the former officer will comply with all reasonable requests involved in the investigation and must attend an interview and, as noted above, the former officer will have been informed in the **Regulation 17** notice that a failure to attend may harm their case. Provisions on interviews are set out in **Regulation 20** of the Conduct Regulations and **Regulation 21** of the Complaints Regulations.

20.39 The investigator must, if reasonably practicable, agree a date and time for the interview as described in 7.64 onwards 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 therefore no requirement that the alternative date must be within 5 working days from the day specified by the investigator.

20.40 Under the former officer regime, 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 a subsequent misconduct hearing may draw an adverse inference from non-attendance.

20.41 The written notice of enquiry will be used only where the investigator considers it unreasonable to require 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 or 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 their position. Where a written notice of enquiry is used no adverse inference will be drawn from non-attendance at an interview.

20.42 The notice will:

a) remind the former officer of the warning contained in **Regulation 17(1)(h)** of the Conduct Regulations or **Regulation 17(1)(h)** of the Complaints Regulations that while they do not have to say anything, it might harm their case if they do not mention when providing a written response something which they later rely on,
b) provide full details of the allegations,
c) set out any questions the investigator wishes to ask the former officer,
d) request a response,
e) specify a time for a response and
f) specify that where the former officer does not respond to a written notice of enquiry, the misconduct hearing panel can draw adverse inference from this.

REPORT OF THE INVESTIGATION AND REFERRAL TO MISCONDUCT PROCEEDINGS

20.43 As set out in Chapter 8, the purpose of the report of the investigation is to give an accurate summary of the evidence that has been gathered, establish the facts underlying the allegation and come to a conclusion as to whether the officer may have breached the Standards of Professional Behaviour.

20.44 The report will be expected to give an opinion on whether there is a case to answer for gross misconduct. 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.

20.45 Where there is evidence of misconduct that falls short of gross misconduct, this must be indicated in the report because it is necessary to conclude and summarise the investigation and to establish that, if the officer had still been serving, they 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

20.46 The report will be expected to contain 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 there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings, had the officer still been serving.

20.47 It should be noted that, for a report following an investigation of a former officer, the investigator will not be required to give an opinion as to whether - if there is no case to answer for gross misconduct or there has not been a breach of the Standards of Professional Behaviour - the case amounts to Practice Requiring Improvement or the matter should be referred to be dealt with under the Performance Regulations.

20.48 On receipt of the report, the appropriate authority must determine whether there is a case to answer for gross misconduct (under **Regulation 23** of the Conduct Regulations). Where they determine that there is no case to answer for gross misconduct they must take no further action. The appropriate authority will not make a determination as to whether the case amounts to Practice Requiring Improvement or the matter should be referred to be dealt with under the Performance Regulations.

20.49 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 their whereabouts, when proceedings should not be brought.

b) Investigation under the Complaints Regulations – Investigations by the appropriate authority

20.50 Where the investigation concerns a Condition A or a Condition B case and the investigation is carried out by the appropriate authority (under **paragraph 16** of Schedule 3 to the 2002 Act), the investigation can lead to a misconduct hearing. The report should 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.

20.51 On receipt of the report, the appropriate authority must determine whether there is a case to answer for gross misconduct. Where they determine that there is no case to answer they must 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 their whereabouts.

20.52 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 IOPC or directed by them, it will not lead to a misconduct hearing. The investigator will nevertheless be expected to give an opinion as to whether there may have been a breach of the Standards of Professional Behaviour and whether that alleged breach was so serious that dismissal would have been justified if the person had still been serving.

c) Investigation under the Complaints Regulations – Investigations by the IOPC

20.53 If the investigation of the former officer was either directed by the IOPC or led by them (under **paragraph 18 or 19** of Schedule 3 to the 2002 Act), the Director General will be expected to give their opinion as to 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.

20.54 Following the report, the Director General will ask for the views of the appropriate authority on whether the former officer has a case to answer for gross misconduct or no case to answer. If there is no case to answer, the appropriate authority should give their view on whether there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings, had the officer still been serving with the police.

20.55 The Director General should then notify the appropriate authority of their determination (under **paragraph 23(5A)** of Schedule 3 to the 2002 Act) following the consideration of the appropriate authority's views as to whether there is a case to answer for gross misconduct or no case to answer. If there is a case to answer for gross misconduct, the appropriate authority will be directed to bring disciplinary proceedings. If the Director General determines no such case to answer, they will determine whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings, had the officer still been serving with the poi.

20.56 Where the former officer is a Condition C person, if the Director General's determination is that there is a case to answer for gross misconduct then they will make a Condition C special determination.

CONDITION C SPECIAL DETERMINATION

20.57 Officers who have left the force and have an allegation against them of gross misconduct, where the allegation was made more than 12 months previously,

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. It is essential that these 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 a 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.

20.58 In determining whether it is reasonable and proportionate, the Director General should have regard to:

a) the seriousness of the alleged misconduct,
b) the impact of the allegation on public confidence and,
c) the public interest.

20.59 This determination can only be made following an investigation (under **paragraph 18 or 19** of Schedule 3 to the 2002 Act), where the Director General determines, after considering the views of the appropriate authority, that there a case to answer for gross misconduct.

20.60 In making a special determination, there are a number of steps that need to be taken by the IOPC and others (see **Regulation 4B** of the Conduct Regulations):

a) the IOPC will give notification that they are making the determination to the complainant, any interested person and the former officer. 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** of Part 1A of Schedule 1 to the Conduct Regulations (see paragraph 20.61 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 they would have been dismissed if they had still been serving and that, if they receive this finding, they will be included on the barred list. The former officer will also be informed, subject to the harm test, of any findings related to the conduct set out in any investigation report submitted to the Director General, their rights to provide a written statement and documentation, their right to be advised by a staff association and any other body and their right to be represented by a police friend,
b) the former officer may, within 21 days, provide a written statement and any document relating to the Condition C special determination,
c) the IOPC will take into account any written statement from the former officer, the complainant or any interested person,
d) the IOPC may consult any persons they think fit and consider any other relevant evidence. It will be appropriate for the IOPC 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 IOPC will need to be aware of Her Majesty's Chief Inspector of Constabulary's potential role in sitting on misconduct hearing panels and whether there is a conflict of interest,

e) where a special determination has been made, any evidence provided for the determination under the consultation will need to be given to the former officer as part of the notification of the hearing,

f) the IOPC will make the determination using the criteria set out in **Regulation 4A** of Part 1A of Schedule 1 to the Conduct Regulations and illustrated in paragraph 20.61 below,

g) on making the determination, the IOPC must give notification in writing to the complainant, any interested person and the former officer.

20.61 As part of the determination, the IOPC will consider a number of criteria which will allow them to make a judgement on the level of seriousness of the misconduct, as required by **Regulation 4A(2)** of the Conduct Regulations. These are set out in **Regulation 4A(3**). 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 IOPC will have to assess in order to determine the level of seriousness of the case.

20.62 When assessing the impact of the misconduct on public confidence in the police, as required by **Regulation 4A(2),** the IOPC will look, for example, at whether the misconduct has had an effect on relations between the public and the police - see **Regulation 4A(4**) for more detail.

20.63 When assessing the public interest in bringing proceedings, as required by **Regulation 4A(2),** the IOPC will look, for example, at whether the former officer should be prevented from future employment in policing and whether disciplinary proceedings are necessary for this purpose - see **Regulation 4A(5)** for further detail. The IOPC can consider other matters to those set out in Regulations – see **Regulation 4A(3)(l**), **(4)(d)** and **(5)(g)** and there is no 'point scoring' system for each criterion.

NOTIFICATION OF REFERRALTO MISCONDUCT HEARING

20.64 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 Director General 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.

20.65 In the case of a Condition C person, the notification should include any written statement or document and any consultation response provided to the Director General as part of their determination. The former officer should also be given notification that, if the allegation of gross misconduct is proved, they may be subject to a finding that they would have been dismissed if they had not ceased to serve and if such a finding is made, they would subsequently be included on the barred list.

MISCONDUCT HEARINGS AND OUTCOMES

20.66 The misconduct hearing for a former officer will be conducted as for serving officers under the Conduct Regulations and described in Chapter 11 with some

important differences in the possible outcomes and sanctions. These differences are set out below:

a) for a non-senior former officer, the panel will have the same composition as for a non-senior serving officer but the member of the police force represented on the panel must be of a more senior rank to the former officer at the point at which they last served with the police force, (note that the panel will have the same composition for serving and former senior officers),

b) the notification of the hearing under both **Regulation 30** and **Regulation 36** of the Conduct Regulations will (as is the case for serving officers) include the subject matter of the case and how that conduct is alleged to amount to gross misconduct. It will also include the fact that the officer will be subject to disciplinary proceedings and that those proceedings could conclude that the former officer would have been dismissed had they still been serving with the police as well as, in the case of a Condition C person, any written document or response provided to the Director General under **Regulation 4B(4),**

c) where the panel find that the conduct amounts to misconduct only, they will record the finding but cannot take any further action,

d) where there is a finding of gross misconduct, the panel can only consider two potential outcomes: disciplinary action or no disciplinary action,

e) where there is a finding of gross misconduct and disciplinary action imposed it can only be that the former officer would have been dismissed if they had still been a member of a police force. There is no option to enforce other sanctions such as a final written warning or reduction in rank given the termination in the former officer's employment status. If the panel determines that the matter does not justify the sanction that the former officer would have been dismissed, no action will be taken and the finding of gross misconduct recorded.

f) where disciplinary action is imposed, the panel must give notice of the right of the former officer to appeal to a police appeals tribunal. Appeals for former officers work in the same way as for serving officers – see Chapter 26.

ACCELERATED MISCONDUCT HEARINGS

20.67 The procedures for accelerated misconduct hearings will apply as described in the Conduct Regulations, and explained in Chapter 12 of this Guidance, with the modification for former officers that disciplinary action can only be imposed where there is a finding of gross misconduct.

20.68 For **Condition A and B** cases, these will be put through the accelerated procedure, as set out in Chapter 12 for serving officers, with the following modifications.

20.69 The special conditions for accelerated hearings in relation to former officers are:

a) there is sufficient evidence, in the form of written statements or other documents, whether written or oral, to establish on the balance of probabilities that the conduct of the former officer constitutes gross misconduct and

b) it is in the public interest for the former officer to be included in the barred list without delay – outlined in **Regulation 49** of the Conduct Regulations and **paragraph 20A(2)(b)** of Schedule 3 to the 2002 Act as modified.

20.70 Disciplinary action can only be that of finding that the former officer would have been dismissed if they had still been a member of a police force. This outcome has the consequence that the individual will be included on the barred list. A finding of misconduct can be recorded but no further action taken.

20.71 Where a serving officer is subject to an accelerated misconduct hearing but resigns or retires before the hearing takes place, they will become a former officer for the purposes of the Conduct Regulations. The special conditions will therefore change as described above. In these circumstances, the appropriate authority will need to review its determination of the special conditions and decide whether it is appropriate to reissue the special case certificate revised under the terms for former officers.

20.72 For **Condition C** cases, there will be no such accelerated procedure and the process will follow the normal investigation process.

SECTION 7: BARRED AND ADVISORY LISTS

This section contains guidance about the police barred list and police advisory list, including the process for reporting, removal and review.	*Page number*
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SECTION 7: BARRED AND ADVISORY LISTS

CHAPTER 21: POLICE BARRED LIST

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

This chapter explains the process and procedure for the police barred list, setting out how and when forces send reports to the College of Policing, what inclusion on the barred list entails and how individuals can be removed from the list. It also covers publication of the details on the barred list as well as the review mechanism for the barred list.

IT INCLUDES GUIDANCE ABOUT

- Useful terms
- Overview and effect of inclusion
- Publication
- Removal on successful appeal/overturning of finding
- Automatic removal from the list
- Removal on successful review
- Removal on individual's death or as a result of error

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authority decision makers
- Professional Standards Department Staff
- Officers who have been dismissed or are facing a misconduct hearing or accelerated misconduct hearing

USEFUL TERMS

21.1 "Relevant authority" is used throughout this section to refer to the "appropriate authority". This has been included to mirror the Barred List Regulations which use "relevant authority" throughout.

OVERVIEW AND EFFECT OF INCLUSION

21.2 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.

21.3 The barred list was established by the Policing and Crime Act 2017 (See Schedule 8 which inserts **Section 88A – 88M** into the Police Act 1996) and the Police Barred List and Police Advisory List Regulations 2017 ("the Barred List Regulations"). The legislation (and the list itself) became active on 15 December 2017.

21.4 Any individuals who are dismissed from positions within policing are included on the barred list as a result of their dismissal where they are:

a) dismissed under the Conduct Regulations with a finding of misconduct,
b) dismissed under the Conduct Regulations with a finding of gross misconduct,

c) dismissed under the Performance Regulations with a finding of gross incompetence[31],
d) dismissed under the Performance Regulations with a finding of unsatisfactory performance,
e) dismissed under the Performance Regulations with a finding of unsatisfactory attendance,
f) police staff members dismissed in any of the above circumstances under the equivalent local procedures used by each force.

21.5 This therefore includes findings made at misconduct hearings and accelerated misconduct hearings in accordance with the Conduct Regulations as well as third stage proceedings under UPP set out in the Performance Regulations. The equivalent for police staff are set out in local policy and guidance.

21.6 Where an individual is dismissed or leaves employment outside of the circumstances outlined above, a report under **Regulation 3** of the Barred List Regulations is not required and would be outside the scope of the legislation e.g. reasons of ill health retirement, mutual agreement or redundancy, as well as other circumstances not expressly mentioned in paragraph 21.4.

21.7 Former officers and special constables who are subject to an investigation and disciplinary proceedings under the former officer provisions, found in Schedules to the Conduct Regulations and Complaints Regulations, which concludes with the outcome that they 'would have been dismissed' will be included on the barred list.

21.8 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 but where such a hearing is held in accordance with local policy these circumstances are captured by the barred list legislation. When a post-employment hearing, as established under local guidance and policy, 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.

21.9 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.

21.10 As a consequence of the status of the barred person, as set out in section 88C of the Police Act 1996, chief officers, local policing bodies, the Independent Office for Police Conduct (IOPC) and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (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

[31] *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 officer's rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking account of the officer's attendance, to the extent that dismissal would be justified." An additional definition of gross incompetence in relation to police staff can be found at* ***Regulation 7*** *of the Barred List Regulations.*

staff member and a special constable, such a person cannot continue to be employed in either position if dismissed from one of those roles.

21.11 Chief officers, as well as the other bodies mentioned above, 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 – see s88E of the Police Act 1996. 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.

21.12 The College of Policing has set out in guidance the process to be followed with regards to conducting vetting checks in relation to inclusion on the barred list.

21.13 Student police officers, or student police staff, who are dismissed via the Police Regulations 2003 Regulation 13 procedure, or the equivalent for police staff, 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

21.14 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, subject to the exemptions set out below. 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.

21.15 These details will be published by the College of Policing and made available on their website.

21.16 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.

21.17 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 -see **Regulations 42(16) and 62(12)** of the Conduct Regulations and **Regulation 3(2)(l)** of the Barred List Regulations. 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:

a) would be against the interests of national security,
b) might prejudice the investigation or other criminal or civil proceedings,
c) would result in significant risk of harm to any individual, including the officer themselves.

21.18 Where any of these conditions apply, the relevant authority must notify the College of Policing setting out why it believes that a publication exemption applies.

21.19 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.

21.20 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 College must not publish the information and the individual's details will be held privately on the list, as per **Regulation 10(4)** of the Barred List Regulations.

21.21 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. It should be noted that the rationale behind not publishing information on the barred list is different to rationale around holding hearings in private and so representations regarding publication should take into account the specific conditions set out in paragraph 21.17.

21.22 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 as per **Regulation 11(2)-(4)** of the Barred List Regulations.

21.23 Representations made at Police Appeals Tribunals proceedings regarding continued publication do not constitute a substantive right of appeal.

21.24 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.

21.25 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.

21.26 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 Police Act 1996.

REMOVAL ON SUCCESSFUL APPEAL/OVERTURNING OF FINDING

21.27 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. See **Regulation 6** of the Barred List Regulations.

21.28 Police staff members who successfully appeal through an internal review route, and have had their status on the force reinstated, will be removed from the barred list.

21.29 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 LIST

21.30 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.

21.31 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

21.32 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 at a misconduct hearing. This process is detailed in **Regulation 7** of the Barred List Regulations.

21.33 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.

21.34 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.

21.35 Information on force systems relating to individuals who are dismissed should be held indefinitely to allow for such individuals to apply for removal from the barred list via the review mechanism.

21.36 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, to be eligible to be considered for other positions in policing.

21.37 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:

a) the individual's demonstration of their suitability to return to policing,
b) the circumstances which led to the original decision/finding,
c) the impact removing their barred status might have on public confidence in the police.

21.38 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 are relevant to the application. The College of Policing may specify the type and nature of information required and request further information, if necessary.

21.39 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.

21.40 The College of Policing must also consider 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.

21.41 The College of Policing may also request further information as it sees fit from the individual applying or the relevant authority.

21.42 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).

21.43 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.

21.44 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

21.45 The College of Policing must 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.

SECTION 7: BARRED AND ADVISORY LISTS

CHAPTER 22: POLICE ADVISORY LIST

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

This chapter explains the process and procedure for the police advisory list, setting out how and when forces send reports to the College of Policing, what inclusion on the advisory list entails and how individuals can be removed from the list. It also covers the review mechanism for the advisory list.

IT INCLUDES GUIDANCE ABOUT

- Useful terms
- Overview and effect of inclusion
- Removal where removal condition satisfied
- Automatic removal from list
- Removal on successful review
- Removal on individual's death or as a result of error

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authority decision makers
- Professional Standards Department Staff
- Officers who have been dismissed or are facing a misconduct hearing

USEFUL TERMS

22.1 "Relevant authority" is used throughout this section to refer to the "appropriate authority". This has been included to mirror the Barred List Regulations which use "relevant authority" throughout.

OVERVIEW AND EFFECT OF INCLUSION

22.2 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 conduct 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.

22.3 Officers and police staff members who resign or retire during the course of a conduct investigation which could have led to their dismissal if they had still been serving, or who leave and a relevant allegation comes to the attention of the appropriate authority, 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 - see section **88I** of the 1996 Act and **Regulation 12** of the Barred List Regulations. This report will contain the information set out in **Regulation 12** and the individual will be included on the advisory list. These individuals will therefore only be included where there is an ongoing investigation.

22.4 The triggers for reporting an individual to the College of Policing for inclusion on the advisory list are:

a) an officer or staff member under investigation for a conduct matter which could lead to their dismissal retires or resigns during the investigation – *the force should report when the individual leaves the force*

b) an officer retires or resigns and a conduct allegation which could have led to their dismissal comes to the attention of the force after they have left – *the force should report when the allegation comes to the attention of the appropriate authority*

c) a designated volunteer has their status withdrawn as the result of conduct, efficiency or effectiveness – *the force should report when the status is withdrawn*

d) a designated volunteer decides to stop volunteering after a relevant allegation about them comes to the attention of the force – *the force should report when the individual decides to stop volunteering.*

22.5 As it is not possible to conclude performance/UPP proceedings once an individual has left the force, there is no requirement to report officers and police staff members for inclusion on the advisory list for performance matters.

22.6 Where an officer resigns at the same time they are served with a **Regulation 17** notice, they would remain subject to the existing contractual arrangements as set out in the Police Regulations 2003. The former officer provisions may also take effect after the individual has left, where appropriate. Police staff members will continue to be subject to the existing contractual arrangements as set out in local force policy.

22.7 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 the attention of the appropriate authority.

22.8 An individual will not be included on the advisory list where they were subject to an investigation which concluded with no disciplinary proceedings being brought and they subsequently leave the force. Individuals will only be included on the advisory list where the allegation against them is one of gross misconduct and could have led to their dismissal if they had not retired or resigned, and there is a live investigation or they are awaiting proceedings. If a determination is made that proceedings will not be brought, the individual must be removed, see paragraph 22.16. Multiple allegations of misconduct only will not result in a report being sent to the College of Policing for inclusion on the advisory list.

22.9 For former officers who meet the conditions set out in Regulations, and where there is a case to answer for gross misconduct, the force should hold a misconduct hearing in order to decide whether the conduct did amount to gross misconduct and whether the officer would have been dismissed if they were still serving.

22.10 For civilian police staff who have left, forces are not under a regulatory obligation to hold post-employment hearings for an allegation of gross misconduct. It is up to the force to determine whether such a post-employment hearing, convened according to local employment practices, should be held to determine if the individual would have been dismissed and should be added to the barred list. It is advisable that forces make a decision one way or the other – either to continue the hearing to its conclusion notwithstanding the individual has left or to withdraw the

proceedings, in which case the individual will not appear on either list. As a result of a finding of "would have been dismissed", both officers and staff would be included on the barred list.

22.11 Chief officers, local policing bodies, the Independent Office for Police Conduct (IOPC) and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (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.

22.12 The College of Policing has set out in guidance the process to be followed with regards to conducting vetting checks in relation to inclusion on the advisory list.

22.13 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.

22.14 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 **section 88M** of the Police Act 1996 (as amended by the Policing and Crime Act 2017).

REMOVAL WHERE REMOVAL CONDITION SATISFIED

22.15 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.

22.16 If a 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** of the Police Act 1996.

22.17 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)** of the Police Act 1996. Following such a report the individual will be removed and will not appear on either list.

22.18 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 LIST

22.19 Designated volunteers 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. Staff and officers can only be included on the advisory list in relation to conduct matters and so will not be removed automatically after 5 years.

REMOVAL ON SUCCESSFUL REVIEW

22.20 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.

22.21 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.

22.22 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.

22.23 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

22.24 The College of Policing must 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.

SECTION 8: GLOSSARY, KEY TERMS AND TEMPLATES

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CHAPTER 24: TEMPLATES	**245**

CHAPTER 23: GLOSSARY AND KEY TERMS

Term	Definition
the 2002 Act	The Police Reform Act 2002
Appropriate authority	i. where the officer concerned is the chief officer or acting chief officer of any police force, the local policing body, for the force's area, ii. in any other case, the chief officer of police of the police force concerned
Barred List Regulations	The Police Barred List and Police Advisory List Regulations 2017
Complaints Regulations	The Police (Complaints and Misconduct) Regulations 2020
Conduct Regulations	The Police (Conduct) Regulations 2020
DG	Director General
DSI	Death or Serious Injury
IOPC	Independent Office for Police Conduct
IOPC statutory guidance	Statutory guidance published by the IOPC on the police complaints system
Misconduct proceedings	A misconduct meeting or a misconduct hearing
Police Appeals Tribunals Rules	The Police Appeals Tribunal Rules 2020
PCC	Police and Crime Commissioner
Performance Regulations	The Police (Performance) Regulations 2020
PRI	Practice Requiring Improvement
PSD	Professional Standards Department
Relevant authority	In relation to the Barred List Regulations, means (i) 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, (ii) 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.

UPP	Unsatisfactory Performance Procedures

SECTION 8: GLOSSARY, KEY TERMS AND TEMPLATES

CHAPTER 24: TEMPLATES

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

Templates for Regulation notices and written notice of enquiries for use in serving notices for serving and former officers and includes:

- Regulation notice for serving officers
- Regulation notice for former officers
- Written notice of enquiry for former officers

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Appropriate authority decision makers
- Professional Standards Department Staff

Notice of alleged breach of the Standards of Professional Behaviour – Regulation 17 of the Police (Conduct) Regulations 2020 and Regulation 17 of the Police (Complaints and Misconduct) Regulations 2020

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 amounted to a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action 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 18(1) or 31(2) or (3) [or 54] of the Police (Conduct) Regulations 2020 or Regulation 20 of the Police (Complaints and Misconduct) Regulations 2020) something which you later rely on in any misconduct proceedings, accelerated misconduct hearing or appeal proceedings.

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

If the appropriate authority revises its assessment of this conduct, you will be given a further written notice.

Based on the information available at this time, the conduct described above, if proved or admitted, has been assessed as amounting to:

Misconduct ☐ Gross misconduct ☐

This may result in your attendance at a:

Misconduct meeting ☐ Misconduct hearing ☐

Name of the person investigating: _____

Contact details (Address/Tel/Email): _____

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: _____

Print name: _____

Date: _____

I authorise a copy of this notice to be forwarded to my staff association

Yes ☐ No ☐

If the notice is not given to the officer by the person investigating, please include the name and signature of the person giving the notice below:

Name: _____

Signature: _____

Date: _____

EXPLANATORY NOTES:

(i) 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 2020 or the Police (Complaints and Misconduct) Regulations 2020.

(ii) The fact that you have been given this notice does not necessarily mean that misconduct proceedings will be taken against you but is 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).

(iii) You have the right to seek advice from your staff association or any other body and be advised, represented and accompanied at any interview, meeting or hearing by a ‘police friend’. This ‘police friend’ must be a police officer, police staff member or a nominee of your staff association and not otherwise involved in the matter. This is in accordance with Regulation 7 of the Police (Conduct) Regulations 2020 or Regulation 18 of the Police (Complaints and Misconduct)

Regulations 2020. A special constable may be represented by a police officer or police staff member.

(iv) As well as this notice, the person investigating should also provide you with the terms of reference which describes the main aspects of the investigation. If you are not provided with the terms of reference, you should be given written notice stating that these terms will not be provided and why.

(v) Within 10 working days, beginning with the first working day after the terms of reference, or notice that those terms of reference cannot be provided, are given, you may provide a written or oral statement relating to any matter under investigation. 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, accelerated misconduct hearing or appeal.

(vi) If, following the service of the notice, the assessment of conduct or the determination of the likely form of any misconduct proceedings is revised then, as soon as practicable, you will be given a revised written notice, together with reasons for that change, unless to do so would give rise to unacceptable harm or would prejudice an investigation.

(vii) 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 dates and places of the alleged misconduct, where known.

(viii) 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.

(ix) At the conclusion of the investigation, if it is determined that there is no case to answer or no proceedings will be brought, you will, 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.

(x) Where the case is referred to misconduct proceedings, you shall be given written notice of this, a copy of any statement made by you to the investigator and, subject to the harm test, a copy of the investigator's report or such parts of the report as relate to you and of any other document which could undermine or assist your case.

(xi) 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. 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.

(xii) If the case is referred to a misconduct hearing, [or accelerated misconduct hearing], you have the right to be legally represented by a barrister or solicitor of your choice (although if your preferred lawyer is not available proceedings need not be delayed where an alternative lawyer can be found). If you decide not to be so represented, you may be represented by a police friend. It is important to note that, if you decide not to be legally represented, you may still be dismissed, or receive any other disciplinary outcome, without being so represented.

(xiii) If you are dismissed as a result of these proceedings, your full name and a description of your conduct will be included on the barred list. Whilst 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. 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 list, you will have the option to have your barred status reviewed, which may result in your removal from the barred list.

(xiv) Outcomes available following misconduct proceedings:

Misconduct meeting

- Misconduct not found
- No further action
- Refer to Reflective Practice Review Process
- Written warning (18 months)
- Final written warning (2 years)

Misconduct hearing

- Misconduct not found
- No further action
- Refer to Reflective Practice Review Process
- Written warning (18 months)
- Final written warning (2 years)
- Extension of final written warning (up to 5 years)
- Reduction in rank
- Dismissal without notice

Notice of alleged breach of the Standards of Professional Behaviour – Regulation 17 of the Police (Conduct) Regulations 2020 and Regulation 17 of the Police (Complaints and Misconduct) Regulations 2020, 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 mentioned when interviewed, or when providing any information (under Regulations 18(1), 20A(2), 31(2) or (3) or 51 of the Police (Conduct) Regulations 2020 or Regulation 20 of the Police (Complaints and Misconduct) Regulations 2020) something which you later rely on in any misconduct proceedings, accelerated misconduct hearing or appeal proceedings.

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

If the appropriate authority revises its assessment of this conduct, you will be given a further written notice.

Based on the information available at this time, the conduct described above, if proved or admitted, has been assessed as amounting to gross misconduct.

Yes ☐ No ☐

This may result in your attendance at a misconduct hearing.

Name of the person investigating: _____

Contact details (Address/Tel/Email): _____

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: _____

Print name: _____

Date: _____

I authorise a copy of this notice to be forwarded to my staff association

Yes ☐ No ☐

If the notice is not given to the officer by the person investigating, please include the name and signature of the person giving the notice below:

Name: _____

Signature: _____

Date: _____

EXPLANATORY NOTES:

i. 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 2020 or the Police (Complaints and Misconduct) Regulations 2020.

ii. The fact that you have been given this notice does not necessarily mean that misconduct proceedings will be taken against you but is 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).

iii. You have the right to seek advice from your staff association or any other body and be advised, represented and accompanied at any interview or hearing by a 'police friend'. This 'police friend' must be a police officer or a police staff member or any other person you nominate that has been approved by the chief officer from the force where you last served and not otherwise involved in the matter. This is in accordance with Regulation 7 of the Police (Conduct) Regulations 2020 or Regulation 18 of the Police (Complaints and Misconduct) Regulations 2020.

iv. As well as this notice, the person investigating should also provide you with the terms of reference which describes the main aspects of the investigation. If you are not provided with the terms of reference, you should be given written notice stating that these terms will not be provided and why.

v. Within 10 working days, beginning with the first working day after the terms of reference, or notice that those terms of reference cannot be provided, are given, you may provide a written or oral statement relating to any matter under investigation. 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 hearing or appeal.

vi. If, following the service of the notice, the assessment of conduct is revised then, as soon as practicable, you will be given a revised written notice, together with reasons for that change, unless to do so would give rise to unacceptable harm or would prejudice an investigation.

vii. 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 dates and places of the alleged misconduct, where known.

viii. 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. Furthermore, it may harm your case if you fail to attend an interview of which you have been given notice.

ix. At the conclusion of the investigation, if it is determined that there is no case to answer or no proceedings will be brought, you will, 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.

x. Where the case is referred to a misconduct hearing, you shall be given written notice of this, a copy of any statement made by you to the investigator and, subject to the harm test, a copy of (i) the investigator's report or such parts of the report as relate to you, (ii) where applicable any written statement or document provided to the Director General under certain provisions, and (iii) any other document which could undermine or assist your case.

xi. 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 hearing, will be based on an objective assessment of all the evidence. If the case is referred to a misconduct hearing, the decision will be determined on the standard of proof required in civil cases, which is the balance of probabilities.

xii. If the case is referred to a misconduct hearing, or accelerated hearing, you have the right to be legally represented by a barrister or solicitor of your choice (although if your preferred lawyer is not available, proceedings need not be delayed where an alternative lawyer can be found). If you decide not to be so represented, you may be represented by a police friend. It is important to note that, if you decide not to be legally represented, you may receive a finding of would have been dismissed, without being so represented.

xiii. If the hearing panel determines that you would have been dismissed if you had still been a serving officer, your full name and a description of your conduct will be included on the barred list. Whilst 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. 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 list, you will have the option to have your barred status reviewed, which may result in your removal from the barred list.

xiv. The hearing panel may determine that the allegations against you amount to a breach of the Standards of Professional Behaviour which does not amount to gross misconduct.

Written notice of enquiry into a breach of the Standards of Professional Behaviour under Regulation 20A of the Police (Conduct) Regulations 2020 or Regulation 21A of the Police (Complaints and Misconduct) Regulations 2020

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 circumstances as part of the investigation into allegations of gross misconduct. These allegations were notified to you by the Regulation 17 notice which was sent to you on _____ [date].

This written notice of enquiry will provide you with an opportunity to answer questions put to you by the investigator and put forward your position. A written notice of enquiry is issued where an investigator has considered that it is unreasonable to require 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 interviewed, or when providing any information (under Regulations 18(1) or 20A(2) or 31(2) or (3) or 54 of the Police (Conduct) Regulations 2020 or Regulation 20 of the Police (Complaints and Misconduct) Regulations 2020) something which you later rely on in any misconduct proceedings, accelerated misconduct hearing or appeal proceedings.

Section (i) sets out the conduct that 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 this date, any misconduct hearing panel may draw adverse inferences at a later stage in the proceedings.

Section (i)

(continue on separate sheet as necessary)

Section (ii) Section (iii)

Name of the person investigating: _____

Contact details (Address/Tel/Email): _____

Signature of person investigating: _____

Date: _____

I acknowledge that I have received a copy of this document.

Signature of former officer: _____

Print name: _____

Date: _____

I authorise a copy of this notice to be forwarded to my staff association

Yes ☐ No ☐

If the notice is not given to the officer by the person investigating, please include the name and signature of the person giving the notice below:

Name: _____

Signature: _____

Date: _____

Note: the guidance in chapters 25 and 26, which relates to appeals is not statutory, as it does not come under the definition of "disciplinary proceedings" as set out in the Police Act 1996. The following guidance will still be helpful in determining the procedure and process for appeal meetings and hearings.

APPEALS

The guidance in Chapters 25 and 26 contains non-statutory guidance about the administration, preparation and conduct of appeals following misconduct proceedings. This relates to appeal meetings convened in accordance with the Conduct Regulations and appeal hearings under the Police Appeals Tribunal Rules.	Page number
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APPEALS

CHAPTER 25: APPEALS FROM MISCONDUCT MEETINGS

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

The process for conducting appeals from misconduct meetings for non-senior officers.

IT INCLUDES GUIDANCE ABOUT

- Introduction
- Right of appeal
- Appeals following a misconduct meeting by non-senior officers

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Non-senior officers wishing to appeal against a decision made at a misconduct meeting
- Police Friend representing such an officer
- Panel members for an appeal from a misconduct meeting made by a non-senior officer

INTRODUCTION

25.1 This chapter of guidance applies to any non-senior officer who wishes to appeal against the finding and/or outcome following a misconduct meeting held under the Conduct Regulations. This chapter does not apply to senior officers (those above the rank of Chief Superintendent). Any appeals arising in senior officer cases are handled in accordance with the Police Appeals Tribunal Rules and Chapter 26 of this guidance.

RIGHT OF APPEAL

25.2 A police officer has a right of appeal against the finding and/or outcome imposed at a misconduct meeting and may be accompanied by a police friend.

25.3 The officer concerned may only appeal on the following grounds, as set out in **Regulation 45(2)** of the Conduct Regulations:

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 Conduct Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

25.4 Where the officer concerned admitted their conduct amounted to misconduct, the right of appeal applies only in respect of the outcome and any disciplinary action imposed, it cannot apply to the finding of the meeting.

APPEALS FOLLOWING A MISCONDUCT MEETING BY NON-SENIOR OFFICERS

25.5 In order to begin the appeal process, the officer concerned must send written notice of the appeal to the appropriate authority, clearly setting out the grounds for the appeal. This must be sent within 7 working days, beginning with the first working day after the officer is given the report of the outcome of the misconduct meeting – unless this period is extended by the appropriate authority due to exceptional circumstances. Exceptional circumstances include where the appropriate authority

has come to an entirely new position on the details of the case since the original meeting.

25.6 In setting out the specifics of the appeal in the notice, it is important that the officer clearly articulates how the grounds of appeal are met, in particular demonstrating why the finding or outcome was unreasonable based on the matters and the evidence considered during the course of the original hearing or how the outcome or finding is materially affected by fresh evidence or unfairness of procedural irregularity.

25.7The officer must also set out in the notice of appeal whether an appeal meeting is requested. Where no such meeting is requested, the matter can be determined on the basis of the papers alone, without the need for a full meeting.

25.8 The appeal will be heard by a member of the police force of a higher rank or a police staff member who is considered to be more senior than the person who conducted the misconduct meeting. A member of police staff should not be appointed to conduct the appeal meeting if the case substantially involves operational policing matters. The appeal may only be heard by a person who is not an interested party or had any previous involvement in the matters subject to appeal.

25.9A police officer or police staff member may be present to advise the person conducting the appeal meeting on procedural matters – see **Regulation 8(6)** of the Conduct Regulations.

25.10 The appropriate authority must, as soon as practicable, give the officer concerned written notice of the name of the person conducting the appeal, the name of any individuals advising this person and of the officer's right to object to either appointment. The officer concerned may object to the appointment of the person conducting the appeal and/or their advisor and must make such an objection before the end of 3 working days, setting out the grounds for the objection. The appropriate authority must determine whether to uphold the officer's objection and notify the officer of the outcome of the determination. Where a replacement is appointed, the officer can make one further objection.

25.11 The appropriate authority must provide the person conducting the appeal with the following documents:

a) the notice of appeal from the officer concerned setting out their grounds of appeal,
b) the record of the original misconduct meeting,
c) any documents given to the person who held the original misconduct meeting,
d) any evidence that the officer concerned wishes to submit in support of their appeal.

25.12 The person conducting the appeal must first decide whether the notice of appeal sets out arguable grounds of appeal. If they determine that they are no arguable grounds then they will dismiss the appeal and inform the officer concerned, setting out their reasons.

25.13 Where the person conducting the appeal agrees that there are arguable grounds of appeal and the officer concerned has requested an appeal meeting, the person conducting the appeal will hold this appeal meeting with the officer concerned present. Where the officer concerned does not attend the meeting, the appeal meeting may proceed in their absence.

25.14 The appropriate authority must provide written notice of the date, time and place of the appeal meeting to the officer concerned, the Director General of the Independent Office for Police Conduct (IOPC) where they were entitled to attend, or to nominate a person to attend, the original misconduct meeting, the complainant where the misconduct meeting arose from a complaint under **paragraph 19A** of Schedule 3 to the 2002 Act and any other interested person, where the misconduct meeting arose from the investigation of a conduct matter under Schedule 3 to the 2002 Act.

25.15 At the appeal meeting the person conducting the appeal establishes the procedure for the appeal meeting, in conjunction with the Conduct Regulations. In principle, any interested person or complainant entitled to be given a written notice of the appeal meeting may attend the appeal meeting. However, the person determining the appeal may impose such conditions as they see fit regarding the attendance of a complainant or interested person (including the circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting. In particular, they may require the complainant or interested person to withdraw whilst a submission in mitigation is made on the officer's behalf where the officer has objected to their attendance.

25.16 The appeal meeting will normally be heard within 5 working days beginning with the first working day after the determination that the officer concerned has arguable grounds of appeal. Where the officer concerned or their police friend is not available at the date or time specified, the officer concerned 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.

25.17 At the appeal meeting, 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) whether any outcome imposed by the misconduct meeting was unreasonable 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 officer, considering in particular whether the unfairness or prejudice could have materially influenced the outcome.

25.18 The person conducting the appeal may confirm or reverse the decision appealed against. Where they feel that the original disciplinary action imposed was too lenient, they may increase the outcome up to a maximum of final written warning.

25.19 It is important to note that an appeal meeting is not a repeat of the misconduct meeting. It is convened in order to examine a particular aspect of the case which is under question and may affect the finding or 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 detail at the appeal meeting to decide what the finding or outcome would have been if the evidence had been available or procedural breach or unfairness had not occurred.

25.20 The decision of the person conducting the appeal has the effect of substituting the original decision of the person conducting the misconduct meeting and should be taken as the decision as from the date of written notice of the outcome of that meeting.

25.21 Before the end of 3 working days from the day following the determination, the appropriate authority must provide the officer concerned with written notice of the determination and a summary of the reasons for the finding of the appeal. The appropriate authority must also give the Director General written notice of the determination and a summary of the reasons in certain Schedule 3 cases (all investigations under **paragraph 18 or 19** and those under **paragraph 16** where the Director General has made a recommendation under **paragraph 25(4C)(c)** which was accepted or a direction under **paragraph 27(4)(a))** - see **Regulation 47(4)** of the Conduct Regulations**.**

APPEALS

CHAPTER 26: APPEALS FROM MISCONDUCT HEARINGS AND THIRD STAGE

SYNOPSIS AND OVERVIEW

THIS CHAPTER RELATES TO

Process of appeals from misconduct hearings for senior and non-senior officers.

IT INCLUDES GUIDANCE ABOUT

- Introduction
- Useful terms
- Circumstances of appeal
- Composition of the tribunal
- Grounds of appeal
- Best practice in notifications
- Notice of appeal
- Notice of appeal out of time
- Delegation of appeal functions
- Presentation of case by Director General
- Procedure on notice of appeal
- Extension of time limits
- Review of appeal
- Moving on from review stage
- Exchange of documentation
- Notice of the hearing
- Calling of witnesses
- Representation at the hearing
- Procedure at the hearing
- Others attending appeal hearings
- Determination of appeal
- Report of the determination of appeal
- Payment of costs

THIS CHAPTER SHOULD BE READ AND UNDERSTOOD BY

- Officers wishing to appeal against a decision made at a misconduct hearing
- Chairs of the Police Appeals Tribunal
- Other panel members of the Police Appeals Tribunal
- Police Friend representing an officer
- Local policing bodies

INTRODUCTION

26.1 This chapter of the guidance applies to any officer who wishes to appeal to a Police Appeals Tribunal following a misconduct hearing held under the Conduct Regulations or Performance Regulations.

26.2 This chapter also applies in cases of a misconduct meeting or misconduct hearing involving a senior officer. In all these cases the relevant appeal must be heard by a tribunal formed in accordance with the Police Appeals Tribunals Rules.

26.3 Appeals related to decisions which have been made under previous versions of the Conduct Regulations or Performance Regulations (i.e. those published in 2008 or 2012) must be dealt with under the Police Appeals Tribunals Rules 2012. The previous iteration of this guidance will continue to apply in those cases.

USEFUL TERMS

26.4 The following terms are used exclusively in this chapter, with the following meanings:

a) 'appellant' – the police officer or former police officer who has submitted an appeal
b) 'respondent' – where the appellant is a chief officer or acting chief officer, the local policing body and in all other cases, the chief officer of the force.
c) 'relevant person' – the relevant local policing body, or where the relevant local policing body has delegated functions for the administration of the appeal to another local policing body, that other body.

26.5 For the purposes of the Police Appeals Tribunals Rules and this chapter:

a) 'police officer' means a constable or special constable who was a warranted constable at the time the determination that is the subject of the appeal was made,
b) 'former police officer' means a constable who had been, but no longer was, a warranted constable at the time the determination that is the subject of the appeal was made and who meets the definition in Section 6 of this guidance.

CIRCUMSTANCES OF APPEAL – Rules 4-6

26.6 All officers have a right of appeal to a Police Appeals Tribunal against any disciplinary finding and/or disciplinary outcome imposed at a misconduct hearing or a finding of gross misconduct and/or any disciplinary outcome imposed at an accelerated misconduct hearing held under the Conduct Regulations.

26.7 Senior 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 in addition to the right of appeal following a misconduct hearing.

26.8 All officers have a right of appeal to a Police Appeals Tribunal against a finding of unsatisfactory performance or attendance following a third stage meeting, held under **Regulation 30** of the Performance Regulations. They may appeal against the following outcomes:

a) dismissal with notice,
b) reduction in rank,
c) redeployment to alternative duties.

26.9 Officers whose case has been dealt with following a third stage meeting, held under **Regulation 32** of the Performance Regulations without having progressed through the first and second stages have a right of appeal against a finding of gross incompetence or unsatisfactory performance. They may appeal against the following outcomes:

a) dismissal without notice,
b) reduction in rank,
c) redeployment to alternative duties,
d) issue of a final written improvement notice,

e) issue of a written improvement notice.

26.10 A police officer may not appeal against any finding of misconduct or gross misconduct where they have accepted the allegation against them. Similarly, they may not appeal against a finding of unsatisfactory performance, unsatisfactory attendance or gross incompetence where they have accepted the allegation against them. In these circumstances, the officer may only appeal against the outcome / disciplinary action that has been imposed.

26.11 Police Appeals Tribunals do not deal with reviews of an individual's status as a barred person on the police barred list – this is undertaken by the College of Policing and follows a separate process described at paragraph 21.32.

COMPOSITION OF THE TRIBUNAL

26.12 The make-up of Police Appeals Tribunals is set out in Schedule 6 to the Police Act 1996 (including amendments).

26.13 Where the appellant is **not a senior officer**, the tribunal consists of:

a) a legally qualified chair taken from a list maintained by the Home Office,
b) a serving senior officer, and
c) a layperson.

26.14 The "layperson" member replaces the retired officer position on the tribunal. A "layperson" is defined in Schedule 6 to the Police Act 1996 and is a person who is not, and has never been, a member of a police force or special constable, civilian police staff, local policing body or other policing body as per the Act. The inclusion of the layperson member allows a further independent and impartial view on the tribunal from outside policing.

26.15 The members of the tribunal should be chosen on a fair and transparent basis by the local policing body. There is a clear need for flexibility within this process but good practice would be for the local policing body to select chairs and laypersons on a random basis to ensure that all members are given the same opportunity for hearing cases. It is also good practice for the local policing body to publish, or be open to publishing, how their system operates.

26.16 The method of selection is an important principle of fairness for the officer concerned as is ensuring proceedings are conducted in accordance with principles of natural justice in order that the selection itself and any subsequent proceedings cannot be called into question on the basis of any perceived, or actual, unfairness.

26.17 Where the appellant **is a senior officer**, the tribunal consists of:

a) a legally qualified chair taken from a list maintained by the Home Office,
b) HM Chief Inspector of Constabulary or an Inspector of Constabulary nominated by the Chief Inspector, and
c) the Permanent Secretary to the Home Office or a Home Office Director nominated by the Permanent Secretary.

26.18 In the interests of fairness, an individual should not sit on a tribunal in relation to any officer if they have already heard the same case at a misconduct meeting or misconduct hearing.

26.19 It is the responsibility of the local policing body to satisfy itself that the members who are sitting on the tribunal are sufficiently independent of the matter so as not to give rise to any suggestion of unfairness.

26.20 Chairs should be appointed as early in the process as possible to ensure that they have sufficient time to read all documentation and come to an understanding of the case.

GROUNDS OF APPEAL – Rules 4-6

26.21 An appeal hearing is not a re-hearing of the original matter. Instead the grounds of appeal for matters dealt with under the Conduct Regulations are:

a) that the finding or disciplinary action imposed was unreasonable,
b) that there is evidence that could not reasonably have been considered at the misconduct hearing or accelerated misconduct hearing, which could have materially affected the finding or decision on disciplinary action 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.

26.22 The grounds of appeal for matters dealt with under the Performance Regulations are:

a) that the finding of unsatisfactory performance or attendance or gross incompetence, and/or the outcome imposed, was unreasonable,
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,
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 officer was required to attend a third stage meeting following a first and second stage meeting, that the officer concerned should not have been required to attend that meeting as their unsatisfactory performance or attendance was not similar to or connected with the unsatisfactory performance or attendance referred to in their final written improvement notice.

26.23 Where the officer concerned admitted the finding at the original proceedings brought in accordance with the Conduct or Performance Regulations, the appeal may only be brought in respect of the outcome or disciplinary action imposed, and may not appeal the finding.

BEST PRACTICE IN NOTIFICATIONS

26.24 The appeals process involves giving multiple notifications to other parties, as set out below. It is best practice in giving these notices and responses to ensure that all relevant parties are copied in to all relevant correspondence concerning the appeal, wherever appropriate.

26.25 It is also essential that the language used in notifications is clear and unambiguous and that accessible versions are made available to those with a particular need. Notifications can be provided via electronic means or by written

communication, according to what is most appropriate and as determined by the person chairing the proceedings.

NOTICE OF APPEAL – Rule 9

26.26 Where an officer wishes to appeal, they will need to give notice in writing to their local policing body. This notice 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 they are appealing against.

26.27 In setting out the specifics of the appeal in the notice, it is important that the officer clearly articulates how the officer considers that the grounds of appeal are met, and in particular demonstrates why the finding or outcome was unreasonable based on the matters and the evidence considered during the course of the original hearing or how the outcome or finding was materially affected by fresh evidence or unfairness due to procedural irregularity.

26.28 The officer must also set out in the notice of appeal whether or not they consent for an appeal to be considered without a hearing.

26.29 The local policing body must appoint a chair to deal with the notice of appeal and any applications for extensions to the time limits. The same chair may, but need not necessarily, chair the tribunal that deals with the substantive appeal, if the matter proceeds to that stage.

26.30 In their notice of appeal, the appellant may request a copy of all or part of the transcript of the original proceedings.

26.31 The local policing body, upon receipt of a notice of appeal, must, as soon as reasonably practicable, supply a copy of the notice to the respondent and, where the appeal is a specified appeal, to the Independent Office for Police Conduct (IOPC). A specified appeal is one where the decision appealed against arose from a complaint or conduct matter to which **paragraphs 18 or 19** of Schedule 3 to the 2002 Act (investigations) applied.

NOTICE OF APPEAL OUT OF TIME – Rule 10

26.32 Where the appellant fails to submit their notice of appeal within the time period of 10 working days, referred to in paragraph 26.26, they may apply for an extension of the time limits, within a reasonable amount of time after the end of that period. They must give their notice of appeal to their local policing body, along with the reasons for it not having been given within the time period and the reasons the appellant considers that it has been given within a reasonable time after the end of that period.

26.33 Upon receipt of a notice of appeal outside the time limit, the local policing body must provide a copy of the notice and the reasons to the chair who must 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 given within a reasonable time after the end of the 10 working day period.

26.34 Where the chair determines that it was reasonably practicable to have given the notice of appeal within the time limit or the chair determines that the notice was not given within a reasonable time after the time limit, the appeal must be dismissed.

26.35 Where the chair determines that it was not reasonably practicable to have given 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 must be allowed to proceed.

26.36 In all cases the appellant must be notified of the outcome of this decision.

DELEGATION OF APPEAL FUNCTIONS – Rule 7-8

26.37 In most circumstances, the role of administration of the hearing will fall to the relevant local policing body i.e. the local policing body for the police force area of which the appellant was a member. However, where the relevant local policing body considers it appropriate – for example where it would minimise delay or introduce a greater element of independence or if the original misconduct hearing was delegated to another force– it may delegate this responsibility to another local policing body.

26.38 This is a discretionary power and should only be used by the local policing body where they consider that it would be beneficial in order to increase the flexibility of the administration of the tribunal, for example.

26.39 The appellant must give their notice of appeal to the local policing body of the force where they are, or were at the given time, a member, or for which they were appointed as a special constable, who will then decide whether to delegate their appeal function to another local policing body.

26.40 On receipt of the notice of appeal and where the local policing body has determined to delegate their functions, the local policing body must, as soon as reasonably practicable, give the appellant and the respondent written notice of the delegation and the details of the relevant person who will then be dealing with the appeal.

PRESENTATION OF CASE BY THE DIRECTOR GENERAL – Rule 12

26.41 Where the original misconduct hearing or accelerated misconduct hearing was presented by the Director General of the IOPC, after a decision made under **Regulation 24(1)** of the Conduct Regulations, the Director General must also present the case at the appeal hearing.

26.42 In these circumstances, the Director General must present the case at the appeal hearing on behalf of, rather than instead, of the respondent. The respondent must give the Director General any assistance necessary in order to allow the Director General to present the case.

PROCEDURE ON NOTICE OF APPEAL – Rule 13

26.43 As soon as reasonably practicable after receipt of a copy of the notice of appeal, the local policing body must supply a copy of the notice to:

a) the respondent,
b) the relevant person, where their functions have been delegated to another local policing body, and,

c) where the appeal is a specified appeal or the Director General is presenting the case, the Director General.

26.44 Where b) applies and the local policing body has delegated their functions, the relevant person must take over the administration of the hearing from this point onwards.

26.45 As soon as reasonably practicable after receipt of a copy of the notice of appeal and within 15 working days beginning the first working day following the day of the receipt, the respondent must provide the relevant person with:

a) a copy of the decision appealed against,
b) any documents that were available to the panel conducting the original hearing, and
c) a copy of the transcript or part of the transcript of the proceedings at the original hearing requested by the appellant.

26.46 A copy of the transcript (if applicable) must also at the same time be given to the appellant.

26.47 The appellant, either within 20 working days beginning with the first working day following the day on which they are 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 their appeal, must provide to the relevant person:

a) a statement setting out the finding or disciplinary action appealed against and of their grounds for the appeal,
b) any supporting documents,
c) where the appellant is permitted to adduce witness evidence[32] (see paragraph 26.78),
    - a list of any proposed witnesses and
    - a witness statement from each of the proposed witnesses,
d) if the appellant consents to an appeal being determined without a hearing (i.e. on the basis of the papers alone), notice in writing to confirm their consent.

26.48 The relevant person must ensure that these documents are copied to the respondent as soon as practicable after receipt.

26.49 On receipt of these documents, the respondent must provide the relevant person within 20 working days beginning with the first working day following the day on which the respondent receives the documents:

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

[32] The appellant / respondent may only propose to adduce witness evidence where the grounds relied upon for bringing the appeal relate to new evidence that has come to light and had not previously been available or considered by the original panel.

d) if the appellant consents to an appeal being determined without a hearing (i.e. on the basis of the papers alone), notice in writing to confirm their consent.

26.50 The respondent must also copy to the appellant, at the same time, the documents in (a), (c) and (d) above, together with a list of any documents provided under (b).

26.51 The relevant person must give a copy of these papers to the chair appointed to deal with the notice of appeal following receipt. Documents must be given to the chair as early as possible once received to allow the chair to consider them with enough time. Best practice for the relevant person would be to copy all papers to the chair immediately on receipt, wherever practical.

26.52 It should be noted that all time limits within the Rules and this section of guidance are upper limits. Every effort should be made to truncate these timelines, as far as appropriate, with agreement from both parties. It is in the interest of all parties to conduct timely and efficient proceedings without undue delay.

EXTENSION OF TIME LIMITS – Rule 14

26.53 The appellant and/or respondent are able to apply to the relevant person for an extension to the time limits for providing documents. They may do this by setting out their reasons for the application and the length of extension being sought.

26.54 On receipt of an application by the appellant or respondent, the relevant person must copy the other party as soon as practicable after receipt and ask whether they consent to the application.

26.55 Where the other party **does** consent to the application, the time limit must be extended by the agreed amount. Where the other party **does not** consent to the application, the relevant person must refer the application to the chair of the tribunal who must determine whether the relevant time period should be extended and for how long.

26.56 There is an expectation that the time limits set out in the Police Appeals Tribunals Rules will ordinarily be complied with and only in exceptional circumstances, such as a particularly complex case, will there be an extension of the time limits.

REVIEW OF APPEAL – Rule 15

26.57 Once the chair has received all the relevant documentation, they must consider the notice of appeal and determine whether the appeal should be dismissed at this stage. The chair will normally make this preliminary determination within 10 working days of receipt of the documents.

26.58 The chair must dismiss the appeal at this stage if it appears to them that, on one or more grounds of appeal:

a) the appeal has no real prospect of success and
b) there is no other compelling reason why the appeal should proceed.

26.59 Chairs have discretion under this Rule to dismiss individual grounds of appeal but allow a substantive appeal to be heard, or dismiss grounds in their entirety. Where one or more grounds of an appeal are dismissed but the appeal is permitted, only

those grounds which have not been dismissed must be considered by the person conducting the appeal, or the full panel where a hearing is convened.

26.60 Where the chair determines to dismiss the appeal at this stage, they must notify both parties in writing of their view and their reasons for making this determination.

26.61 The appellant and/or respondent may, within 10 working days, beginning with the first working day after being notified of the chair's preliminary view, make written representations to the chair and the chair must consider any such representations before coming to their final decision.

26.62 The chair must inform the appellant, respondent and relevant person of their final decision. It is expected that the decision will be made and communicated within 10 working days beginning with the day of receipt of the last of the representations. Where the chair dismisses the appeal, or as the case may be ground of appeal, this notification must include their reasons for doing so.

MOVING ON FROM REVIEW STAGE

26.63 Following the review, the chair must determine whether a hearing is required or whether the appeal / grounds of appeal can be determined on the papers alone without a full hearing. The appeal may only proceed without a hearing with the consent of the appellant, otherwise a hearing must be convened.

26.64 It is expected that the chair will make the decision on whether to hold a hearing on the papers within 10 working days of receiving the representations from the appellant and respondent. Where those representations are contained within the application of appeal, this may be determined and communicated simultaneously with the **Rule 15** determination as appropriate.

26.65 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 their position. The appellant may also reconsider their consent to the determination of the appeal without a hearing prior to a decision on this issue by the chair. The appellant's withdrawal of consent must be notified to the relevant person in writing and a full hearing must be held.

26.66 Where the appellant, having seen the documents provided by the respondent, withdraws their consent to the matter being dealt with on the papers, a full hearing must be held.

26.67 If the appellant has consented to an appeal being dealt with on the papers, the chair may determine that the appeal must go forward without a hearing. If the appellant has not consented to an appeal being dealt with on the papers, the appeal must be dealt with at a hearing. Where the appeal is dealt with at a hearing, the chair must give the appellant and the respondent their name and contact details.

26.68 Where the chair allows the appeal to go forward to a hearing, the relevant person will be responsible for making the administrative arrangements before and during the hearing. The relevant person must also ensure that the members of the tribunal are provided with the relevant papers together with a schedule of documents.

26.69 The chair who made the determination to allow the notice of appeal to proceed need not necessarily be the same 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 must be the chair appointed to hear the appeal itself.

26.70 The relevant person, in consultation with the chair, is expected to organise the hearing as soon as reasonably practicable and in any case, no later than 3 months after the determination by the tribunal chair that a hearing should be held, bearing in mind the ability to truncate timescales as set out in 26.52.

EXCHANGE OF DOCUMENTATION – Rule 17

26.71 Once the appellant and respondent have submitted their respective documents, either of them may apply to the chair for disclosure of any documents by the other party where it is relevant to the appeal.

26.72 The chair may request the disclosure of any such document and where it is disclosed, a copy must be given to the chair and the party which requested it.

26.73 Where the appellant or respondent does not comply with a request to disclose any document, then the appellant or respondent (as appropriate) must give the chair and the other party their reasons for non-disclosure in writing.

26.74 The tribunal in making its final determination after the appeal hearing 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, if they had been disclosed.

NOTICE OF THE HEARING – Rule 18

26.75 The chair must cause the appellant and respondent to be given written notice of the date, time and place of the hearing at least 20 working days, or such shorter period as agreed by both parties, before the date on which the hearing is due to begin.

26.76 The appellant, respondent, complainant, any interested person, any witness and/or the Director General may provide written representations to the chair regarding the exclusion of any person from the hearing. The chair may, having considered these representations, exclude any such person. The chair may also require notice of the hearing to be published on the force's website for a period no later than 5 working days before the date on which the hearing is due to begin.

26.77 Hearings held under **Rule 5** of the Police Appeals Tribunal Rules i.e. performance cases, must not be held in public and the force is not required to publish any information regarding the hearing on their website.

CALLING OF WITNESSES

26.78 Witnesses may only be called in appeal hearings where the ground of appeal included in the appellant's notice of appeal is that there is evidence which could not reasonably have been considered at the original hearing which could have materially affected the finding or decision. Both the respondent and the appellant are able to call witnesses in these circumstances.

26.79 In such cases, the respondent may propose a witness who may give evidence to deal with the issue raised by the appellant. For example, where the appellant submits new medical evidence that was not available at the original hearing, the respondent may wish to propose their own witness to give evidence on this issue.

26.80 The chair must determine before the hearing whether to allow any witness that either party proposes to call to give evidence in front of the tribunal. Witnesses will only be permitted where the ground, or one of the grounds, of 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.

26.81 No witnesses can give evidence at the hearing unless the chair reasonably believes that it is necessary for the witness to do so. Any witness who does attend the hearing may be subject to questioning and cross-questioning. Where the chair does believe that the evidence is necessary, the chair must require the witness to attend, where the witness is a police officer. Where the witness is not a police officer, the chair must give written notice to the witness that their attendance is necessary and the date, time and place of the hearing.

26.82 It is for the tribunal to decide on the admissibility of any evidence, or to determine whether or not any question should be put to a witness.

26.83 The tribunal may admit as evidence a written witness statement of a proposed witness supplied as per **Rule 21**. Evidence given in this manner will not be admissible if it would not have been admissible had it been given orally.

REPRESENTATION AT THE HEARING – Rule 19

26.84 The appellant can be represented at a hearing by a relevant lawyer or a police friend. Where the appellant is represented by a lawyer, the appellant's police friend may also attend. If the appellant decides not to be represented by a lawyer, the hearing may take place and the appeal may be determined without the appellant being represented.

26.85 The respondent may be represented at the hearing by the relevant and appropriate person. If the respondent is the force, they may be represented by a lawyer or police officer. If the respondent is the local policing body they may be represented by the chief executive or other officer or employee of the relevant local policing body. However, the respondent has no such right where the Director General is presenting the case.

26.86 It is the responsibility of the respondent to ensure that their representation at the hearing could not give rise to the suggestion of unfairness. This will include where an independent legal advisor has been instructed by the appropriate authority on the original case and is representing the respondent in the appeal matter.

PROCEDURE AT THE HEARING – Rule 20

26.87 The procedure for the appeal hearing is set out in greater detail in the Police Appeals Tribunals Rules and is otherwise determined by the chair themselves, according to the principles of natural justice and fairness.

26.88 The relevant person shall arrange for a verbatim record of evidence given at the hearing to be taken and kept by the local policing body for at least 2 years, beginning with the day after the date of the end of the hearing.

26.89 The tribunal have discretion to proceed with the hearing in the absence of either party, whether represented or not, if it feels it is just and proper to do so. Where the hearing proceeds in the absence of either party, the tribunal should record its reasons for doing so. The tribunal may adjourn the appeal as necessary.

26.90 Appeal hearings must 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. This is in keeping with the principle that disciplinary proceedings should be as open and fair as possible. The chair may hear representations from the appellant, respondent or otherwise in relation to the exclusion of any person from all or part of the proceedings.

26.91 In the interests of transparency and openness details of any appeal hearing, along with the determination following the appeal should ordinarily by published in order to facilitate the opportunity for members of the public to attend the hearing. Police forces should publish this information in a manner that is clearly identifiable and easily accessible on the force's website (in a case where the functions have been delegated, any such notice must be published on the originating force's website).

26.92 Following any representations made to the chair, the chair may require the police force of which the appellant was a member to publish details of the hearing including the appellant's name, date, time and place of the hearing and the original finding made, on their website. Where required, this must be published no less than 5 working days before the date on which the appeal hearing begins.

OTHERS ATTENDING APPEAL HEARINGS – Rules 22-24

26.93 Where the substance of the appeal is related directly to a complaint made against the appellant or is a conduct matter involving an interested person, the chair of the tribunal must give written notice of the time, date and place of the hearing to the complainant or interested person at the same time as this notice is given to the appellant and respondent.

26.94 The complainant or interested person may attend the tribunal as an observer. The complainant or interested person may be accompanied by one other person and, if the complainant or interested person has a special need, by a further person in order to accommodate that need.

26.95 Where the complainant or interested person or any person accompanying them is to give evidence at the hearing, this individual may not attend the hearing before that evidence is given.

26.96 Where the appeal is a specified appeal (see paragraph 26.31) then the chair must ensure that the Director General of the time, date and location of the hearing at the same time as this notice is given to the appellant and the respondent under paragraph 26.75. In such cases, the Director General may also attend as an observer.

DETERMINATION OF APPEAL – Rule 26

26.97 A tribunal, having considered the evidence presented at the hearing, must determine whether the ground or grounds of appeal which the appellant relies on have been made out. A tribunal does not need to be unanimous in its determination of the appeal or any other decision and may reach a decision based on a majority. Where a tribunal finds itself divided equally, the chair will have the casting vote. The tribunal must not indicate whether any determination was taken unanimously or by a majority.

26.98 A tribunal may make any decision that the original panel or person could have imposed at the original meeting or hearing, including increasing or reducing the original outcome.

26.99 Where the tribunal decides that the finding or outcome may be unsafe due to new evidence or procedural unfairness, 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 must be reheard by a fresh panel which does not contain any of the members of the original panel.

26.100 Where relevant, the chair, as part of their determination, must provide representations to the College of Policing as to the continued publication of the individual's information on the barred list. The chair must have regard to the relevant exemptions from publication as set out in paragraph 21.17 and whether circumstances have changed to mean that one, or more, of these exemptions applies to the individual.

26.101 The decision of the tribunal will normally be made on the day of the hearing. Where this is not practicable then the decision must be made as soon as possible.

REPORT OF THE DETERMINATION OF APPEAL

26.102 The chair must prepare a written statement of the tribunal's determination and its reasons for it. This will include any representations with regard to publication of the individual's details on the barred list as per paragraph 21.21.

26.103 The appellant must be given written notice of the decision of the tribunal before the end of 3 working days, beginning with the first working day after the day on which the appeal is determined.

26.104 As soon as reasonably practicable after the determination of the appeal the chair must ensure that a copy of this written notice is given to the respondent, relevant person and, where functions have been delegated, local policing body. Where the appeal was in relation to a complaint, a copy of the written notice of determination must also be given to the complainant and any interested person. Where the appeal is a specified appeal, a copy of the written notice of determination must be sent to the Director General, unless they have presented the case.

26.105 Where the chair requires publication to take place, the chair must require the police force of which the appellant was a member to publish the written statement and, where it had been previously published, a copy of the report from the original misconduct hearing or accelerated misconduct hearing. This is to ensure that there

is transparency and accountability following an appeal hearing. The determination must be published on the force website within a period of 10 working days, beginning with the day after the day on which the hearing is concluded, and must be published for no less than 28 calendar days.

26.106 The police force of which the appellant was a member may redact the determination it publishes:

a) where it considers redaction is:
   i) necessary to prevent premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,
   ii) necessary in the interests of national security,
   iii) necessary for the prevention or detection of crime or detection of misconduct by other police officers or police staff members or their apprehension for such matters,
   iv) necessary and proportionate for the protection of the welfare and safety of witnesses or informants,
   v) otherwise in the public interest and

b) in line with any restrictions imposed on disclosure of information during the course of the appeal proceedings.

26.107 Any reasons for redaction should be outlined within the determination.

26.108 The chair may dispense with the requirement to publish where they feel that it is appropriate to do so, considering the permissible redactions set out above. The chair may also take into account any representations with regard to publication made at, or in written representations before, the hearing.

26.109 A police officer ordered to be reinstated in their former force or rank will be deemed to have served in their 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 they would have been in had they not been dismissed or reduced in rank. This has immediate effect. Unless otherwise determined at the hearing, the officer is deemed to have served in the force for the purposes of their pay from the date of the original decision.

PAYMENT OF COSTS

26.110 All fees and expenses of the tribunal members are paid for by the local policing body – including where the administration of the tribunal has been delegated to another local policing body as the relevant person.

26.111 An appellant must pay their own costs of the appeal unless the tribunal directs that the whole or part of their costs are to be paid by the local policing body. Absent dishonesty or a lack of good faith, a costs order should not be made against the local policing body unless there is good reason to do so. In considering an award of costs against the local policing body the tribunal must balance the financial prejudice to the particular complainant, against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision were to be successfully challenged.

26.112 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.