

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

### **POLICE STAFF MISCONDUCT PROCEDURES**

#### **Contents**

- 1 Introduction
  - 2 Key Principles
  - 3 Police Staff Council Standards of Professional Behaviour
  - 4 Definitions
  - 5 Trade Union Representative/Work Place Companion
  - 6 Management Action
  - 7 Formal Procedure
  - 8 Investigation
  - 9 Investigation Interview/Written response
  - 10 Investigation Report
  - 11 Types of Misconduct Proceedings
  - 12 Misconduct Meeting/Hearing
  - 13 Outcome of Misconduct Proceedings
  - 14 Outcomes Available at Misconduct Meeting
  - 15 Outcomes Available at Misconduct Hearing
  - 16 Appeal Against Findings of Misconduct Meeting
  - 17 Appeal Against Findings of Misconduct Hearing
  - 18 Suspension
- Annex A – Standard Notice of Allegation

## **1. INTRODUCTION**

1.1 The Taylor Review of police disciplinary arrangements (the Taylor reforms) led to the new regulated disciplinary and Unsatisfactory Performance and Capability arrangements for police officers which are set out in the Police (Conduct) Regulations 2008 and the Police (Performance) Regulations 2008.

1.2 The Taylor report recognised that it would be desirable, where possible, for the disciplinary procedures for police officers and police staff to be compatible in order to drive consistency nationally.

1.3 The Police Staff Council consider it important that police officers and police staff receive equal treatment when subject of an investigation into an allegation of misconduct. Some cases already involve police officers and police staff being investigated for matters arising from the same incident and therefore having procedures that are as compatible as possible is clearly desirable.

1.4 This document provides guidance that enables forces to consider linking elements of the new police officer misconduct procedure to each forces' misconduct procedure for police staff.

## **2. KEY PRINCIPLES**

2.1 The misconduct procedure should apply to all police staff and underpin the Police Staff Council (PSC) Standards of Professional Behaviour which set out the high standards of behaviour that the police service and the public expect of police staff.

2.2 The procedure aims to provide a fair, open and proportionate method of dealing with alleged misconduct.

2.3 The procedure is intended to encourage a culture of learning and development for individuals and/ or the organisation.

2.4 Improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the Police Service).

2.5 The Police Service and recognised trade unions are committed to ensuring that this procedure is applied fairly to everyone.

2.6 It is important that managers understand their responsibility to respond to, and deal promptly, and effectively with, unsatisfactory behaviour and complaints about police staff conduct from members of public and/or colleagues. It is a key responsibility of all

managers to understand and apply this procedure in a fair, proportionate and timely manner.

2.7 The police service will support any manager who has exercised his or her judgement reasonably, fairly and objectively and adhered to the guidance provided.

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

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

### **4. DEFINITIONS**

4.1 Misconduct is a breach of the Standards of Professional Behaviour

4.2 Gross Misconduct is a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

### **5 TRADE UNION REPRESENTATIVE/WORK PLACE COMPANION**

5.1 The individual concerned has the right to consult with, and be represented by a trade union representative or a work place companion at all stages of the procedure.

5.2 Any person acting as a trade union representative or work place companion should, subject to the exigencies of the service, be allowed to do so during normal working hours.

5.3 The trade union representative or work place companion may:-

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

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

5.5 A trade union representative or work place companion cannot be appointed to act as such if his/her presence might cause a conflict of interest (has had some involvement in the matter or is a witness to the alleged misconduct) or they are located at a remote geographical location when someone suitably qualified is available on site.

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

## **6. MANAGEMENT ACTION**

6.1 Management action is where the role of a police staff or police officer manager is critical in ensuring early and swift intervention and effective management of police staff conduct. Management action is not a formal misconduct outcome but is considered part of the normal managerial process. Cases of minor misconduct are usually best dealt with by local managers by way of management action.

6.2 A line manager should determine whether management action is the most appropriate way of dealing with the issue. Management action may include:

- Pointing out where the behaviour fell short of the required standards.
- Identifying expectation for future conduct.
- Establishing an improvement plan (where appropriate)
- Addressing underlying causes of the conduct through training, coaching, advice and support

6.3 If the line manager feels that the matter cannot be dealt with by means of management action then a referral should be made to the Appropriate Authority for a formal case assessment.

## **7. FORMAL PROCEDURE**

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

7.1 Where an allegation is made against an individual, an assessment will be made as to whether the conduct (if proved or admitted) would amount to misconduct or gross misconduct (see paragraph 4 for definitions).

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

- Allow the individual subject to the misconduct procedure to have an early indication of the possible outcome if the allegation is proven or admitted.
- Give an indication of how the matter should be handled (for example, locally or by the force Professional Standards Department or HR department).

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

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

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

7.6 If the initial assessment has been made incorrectly or if new evidence emerges, then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness to the individual, where a further severity assessment is made which alters the original assessment then the individual will be informed and will be provided with the reasons for the change in the assessment.

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

7.8 Where there are possible or outstanding criminal proceedings against the individual these will not normally delay the misconduct investigation. The presumption is that action for misconduct should be taken prior to or in parallel with any criminal proceedings. Where potential prejudice to any criminal proceedings is identified the misconduct matter will still be investigated and a report submitted to the appropriate authority who will decide whether there is a case to answer in respect of misconduct or gross misconduct. If a decision is made that the matter amounts to misconduct and that management action is appropriate, then this can be done without the need to refer the

matter to misconduct proceedings. In all other cases where management action is not appropriate, no referral to disciplinary proceedings will take place if this would prejudice the criminal proceedings.

## **8. INVESTIGATION**

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

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

8.3 The purpose of the investigation is to:-

- Gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct.
- Assist the Appropriate Authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

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

### **(A standard notice template is attached at Annex A)**

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

8.5 The notice should clearly describe in unambiguous language the particulars of the conduct that it is alleged fell below the standards expected of the individual.

8.6 The terms of reference for the investigation, or the part of the terms of reference for the investigation relating to the individual's conduct, should, subject to there being no prejudice to that or any other investigation, be supplied to the individual and to his or her trade union representative or work place companion on request, and they should be informed if the terms of reference change.

8.7 The written notification may be provided to a manager (including by e mail) to give to the individual concerned. The notice should ordinarily be given to the individual in person. In cases where this is not possible the notice should be sent by recorded delivery to his or her last known address. The responsibility for ensuring the notice is served rests with the investigator.

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

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

8.10 In the interests of fairness, care should be taken where an incident is being investigated to ensure that the notification is given to the individual as soon as practicable after an investigator is appointed (subject to any prejudice to that or any other investigation).

8.11 If at any time after the service of the notice the appropriate authority revises the assessment of the conduct or the level of the misconduct proceedings, then as soon as practicable the individual concerned shall be given a further written notice.

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

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

Where an interview with the individual concerned is necessary the investigator and the individual concerned should agree a date and time for the interview. The trade union representative or work place companion should also be consulted and allowed to make representations about the date and time of the interview. If no agreement can be reached then the investigator may specify a time and date, giving at least 10 days advance notice of the time and date. If the individual concerned or his/her trade union representative or work place companion is not available on the specified date then the interview can be postponed to a time proposed by the individual concerned provided it is reasonable and within 5 working days of the specified date. Interviews may be tape recorded if appropriate (for example in complex cases), or a record taken of the interview which the individual concerned will have the opportunity to comment on and agree as being an accurate record of the interview.

9.2 The individual shall be given a written notice, by the investigator, at least 10 days in advance of the date, time and place of the interview which the individual concerned must attend. The individual shall also be advised of the right to be accompanied by a trade union representative or work place companion and if so accompanied it shall be pointed out that this person may not answer any questions asked of the individual during the interview.

9.3 The investigator will, at least 10 days in advance of the interview, provide the individual concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the individual concerned to prepare for the interview.

9.4 Documentary evidence shall be subject to the Harm test and will not be supplied to the individual concerned if the investigator considers that preventing disclosure is necessary:

- To prevent the premature or inappropriate disclosure of information that is relevant or may be used in any criminal proceedings.
- In the interests of national security.
- For the prevention or detection of crime or the apprehension or prosecution of offenders.
- For the prevention or detection of misconduct by other police officers or police staff or their apprehension for such matters.
- Justified on the grounds that providing the information would involve disproportionate effort in comparison with the seriousness of the allegation.
- Necessary and proportionate for the protection of the welfare and safety of any informant or witness.
- Otherwise in the public interest.

9.5 The investigator will notify the individual of the progress of the investigation at least every 4 weeks commencing from the date of service of the notice of investigation.

## 10. INVESTIGATION REPORT

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

- Provide an accurate and objective summary of the evidence.
- Attach or refer to any relevant documents.
- Indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

10.2 When the appropriate authority is satisfied that the investigation is complete it will determine whether the individual concerned has a case to answer or not. Where it is determined that there is no case to answer, the appropriate authority may:

- Take no further action.
- Refer the matter to the BCU/Department for management action.

10.3 Where it is determined that there is a case to answer in respect of misconduct, the appropriate authority may:

- Refer the matter to the BCU/Department for management action.
- Refer the matter to misconduct proceedings.

10.4 Where it is determined that there is a case to answer in respect of misconduct (and management action is not appropriate) then the matter will be referred to a misconduct meeting. Where it is determined that there is a case to answer in respect of gross misconduct then the case shall be referred to a misconduct hearing.

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

10.6 Upon making a determination that the matter is to be referred to misconduct proceedings the appropriate authority shall as soon as reasonably practicable ensure the individual concerned receives a written notice with the following information:

- Notification of the referral to a misconduct meeting or hearing.
- Details of the alleged conduct and how it amounts to misconduct or gross misconduct.
- The name of the person(s) appointed to conduct the misconduct meeting or hearing and the adviser to it (if applicable).

- A copy of any statement the individual concerned may have made to the investigator.
- Subject to the HARM test – a copy of the investigation report or parts thereof (together with any documents attached to or referred to in that report as related to the individual).
- Any other relevant document gathered during the course of the investigation.
- Advised of the right to be represented by a trade union representative or work place companion.

## 11. TYPES OF MISCONDUCT PROCEEDINGS

11.1 There are two types of misconduct proceedings:

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

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

11.2 It is important that misconduct hearings are only used for those matters where the individual has a live final written warning and has potentially committed a further act of misconduct that warrants misconduct proceedings or the misconduct alleged is so serious that it is genuinely considered that if proven or admitted dismissal from the police service would be justified.

## 12. MISCONDUCT MEETING/HEARING

12.1 A misconduct meeting will be conducted by:

- A senior manager (if this is a police officer it must be a substantive Chief Inspector or above)

12.2 A HR advisor may attend to advise on procedural matters only.

12.3 A misconduct hearing should consist of a 3 person panel:

- The chair should be either a senior officer (ACPO rank) or a senior Human Resources Professional. A senior Human Resources Professional means a human resources professional who in the opinion of the appropriate authority has sufficient seniority, skills and experience to conduct the misconduct hearing.
- The two other members of the panel should consist of either a police officer of Superintendent rank or above or senior police managers.

- There should be at least one senior HR Professional on the panel.

12.4 Following service of the notice of referral to a meeting/hearing the individual concerned may object to the person(s) appointed to conduct the meeting/hearing or any person named who will advise at the meeting/hearing. Any objection must be in writing and submitted to the Appropriate Authority within 3 working days commencing the first working day following service of the referral notice, setting out the grounds for objection. The Appropriate Authority will notify the individual concerned whether it upholds or rejects the objections. If the objections are upheld the person(s) to whom the individual concerned objects will be replaced.

12.5 Within 14 working days commencing the first working day following service of the referral to a meeting/hearing, the individual concerned may provide the following:

- Written notice of whether or not he/she accepts that his/her conduct amounts to misconduct or gross misconduct as the case may be.
- Where the individual accepts that his or her conduct amounts to misconduct or gross misconduct as the case may be, any written submission he/she wishes to make in mitigation.
- Where the individual concerned does not accept that his conduct amounts to misconduct or gross misconduct as the case may be, or he/she disputes part of the case against him/her, written notice of:-
  - the allegation he/she disputes and his/her account of the relevant events; and
  - any arguments on points of law which he/she wishes to be considered.
- A copy of any document to be relied upon during the misconduct proceedings.

12.6 Generally speaking a meeting/hearing will be conducted without witnesses. Where there are proposed witnesses the individual and the investigator concerned will submit details of proposed witnesses to the appropriate authority who will supply the list to the person(s) conducting the meeting/hearing. The list will include brief details of the evidence the witnesses are able to provide and their name and address. The person(s) conducting the meeting/hearing will:

- Consider the list of proposed witnesses.
- Determine if any witness should attend the meeting/hearing.
- Inform the individual and investigator concerned of the reasons why the request for a witness (es) to attend has been accepted or rejected.

12.7 There is a presumption that witnesses will not be required to give evidence at a meeting/hearing. Where a relevant witness is required to attend, then if that person is a police officer he/she will be ordered to attend, all other relevant witnesses required to attend will be given written notice that his/her attendance at the meeting/hearing is necessary.

12.8 A misconduct meeting will take place no later than 20 working days commencing with the first working day following service of the notice of referral to the misconduct meeting. A misconduct hearing will take place no later than 30 working days commencing with the first working day following service of the notice of referral to the misconduct hearing. This period may be extended by the person(s) conducting the meeting/hearing if he or she considers it necessary in the interests of justice. In cases where the misconduct to be considered was identified as a direct result of a complaint, then any decision by the appropriate authority to hold a meeting/hearing may be subject of appeal by the complainant. The individual concerned should therefore be informed of the determination to proceed to a misconduct meeting or hearing but also informed that the appropriate authority's decision could be subject of appeal by the complainant to the IPCC. The appropriate authority should then wait until either the 28 day period that the complainant may appeal has elapsed or an appeal has been received and decided by the IPCC, before proceeding with a misconduct meeting. Where a matter is to be referred to a misconduct hearing, then those proceedings may proceed without the need to wait to see if an appeal is made by the complainant. .

12.9 If reasonably practicable the date and time of the meeting/hearing should be agreed with the individual concerned, at least 10 days notice must be given of any meeting/hearing. If no agreement can be reached then the person(s) conducting the meeting/hearing will set a date and time. Once the date and time has been agreed or set by the person(s) conducting the meeting/hearing the Appropriate Authority shall provide the individual concerned with a written notice giving details of the date and time of the meeting/hearing at least 10 days in advance of any such meeting/hearing.

12.10 If the individual concerned or his/her trade union representative or work place companion is unable to attend the meeting/hearing then the individual concerned can propose an alternative date and time which must be reasonable and within 5 working days of the specified date. In such circumstances and if reasonable, the meeting/hearing should be held on the proposed alternative date and the Appropriate Authority will provide an amended notice to the individual concerned.

12.11 The individual and the person(s) conducting the meeting/hearing will be supplied with the same documents at least 10 days in advance of the meeting/hearing. Prior to the meeting/hearing, the person(s) conducting the proceedings must fully apprise themselves of all the evidential and procedural issues set out in the documentation. The documents supplied by the Appropriate Authority are:

- Written notice of the referral;
- The conduct that is the subject of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;
- A copy of any statement he/she may have made to the investigator during the course of the investigation; and
- Subject to the harm test, a copy of the investigator's report or such parts of that report as relate to him or her (together with any document attached to or referred

to in that report as relates to him/her) and any other relevant document gathered during the course of the investigation.

- Documents provided by the individual in response to the notice of referral to a meeting/hearing.
- Where the individual concerned does not accept that his/her conduct amounts to misconduct or gross misconduct or where he/she disputes any part of the case, any other documents that in the opinion of the appropriate authority should be considered at the misconduct proceedings.

12.12 If the individual concerned is a trade union representative then subject to the consent of the individual, the person(s) conducting the meeting/hearing should discuss the case with a senior trade union representative or a full time official of the trade union concerned in order to avoid the perception that the proceedings are an attack on the union.

12.13 Once the date and time of the meeting/hearing has been agreed or specified, the individual concerned shall attend the meeting/hearing. If the individual is unable to attend and the person(s) conducting the meeting/hearing considers the grounds to be reasonable, the individual concerned may be allowed to participate in the meeting/hearing by other means (for example by a conference telephone call).

12.14 If the individual concerned fails to attend the meeting/hearing he/she may still be represented by a trade union representative or work place companion. Where the individual concerned fails to attend the meeting/hearing without good cause then the case may still proceed and be concluded in his/her absence. When making a determination to proceed without the presence of the individual concerned the person(s) conducting the meeting/hearing shall take into consideration the nature of the allegation, the individual's misconduct record and any medical opinion on whether the person is fit to attend the meeting/hearing

12.15 Where an individual raises a grievance during the misconduct proceedings the proceedings may (if appropriate) be temporarily suspended in order to deal with the grievance. Where the grievance and misconduct proceedings are related, it may be appropriate to deal with both issues concurrently. The misconduct procedures should be capable of dealing with issues relating to those proceedings. For example if the grievance related to the person(s) appointed to hear the matter at a meeting/hearing then the provision will exist to object to that person and therefore the reason for the grievance will have been resolved.

12.16 Where misconduct proceedings are as a direct result of a public complaint, the complainant or other interested party will be notified of the meeting/hearing by the Appropriate Authority and may attend as an observer up to but not including the point at which the person(s) conducting the meeting/hearing considers the question of misconduct outcome.

12.17 Where misconduct proceedings are as a result of a managed or independent investigation by the IPCC or on the recommendation or direction of the Commission, then the IPCC may attend the meeting/hearing to make representations. The person(s) conducting the proceedings will notify the individual concerned.

12.18 A record will be made of the meeting/hearing and this may include by means of digital recording.

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

13.1 If the person(s) conducting the meeting/hearing find that the individual's conduct did fail to meet the PSC Standards of Professional Behaviour then the person(s) conducting the meeting/hearing will then determine the most appropriate outcome.

13.2 In considering the question of outcome the person(s) conducting the meeting/hearing will need to take into account any previous written warnings that were live at the time of the initial assessment of the conduct in question, any aggravating or mitigating factors and have regard to the individual's record of service, including any previous live misconduct outcomes.

13.3 The person(s) conducting the proceedings are also entitled to take account of any early admission of the conduct on behalf of the individual concerned and attach whatever weight to this as they consider appropriate in the circumstances of the case.

13.4 In addition the individual concerned and his or her trade union representative or work place companion should be given the opportunity to make representations on the question of the most appropriate outcome of the case.

13.5 The person(s) conducting the proceedings shall provide a written notice of the finding and outcome to the individual concerned as soon as practicable after the conclusion of the meeting/hearing and in any case within 3 working days. The written notice shall set out the finding of the person(s) conducting the meeting/hearing, any disciplinary outcome imposed and the right to appeal against the finding and/or outcome.

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

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

- Not proven
- No further action

- Management advice
- Written warning
- Final written warning.

14.1 Written warnings shall remain live on the personal file of the individual concerned for 12 months from the date the warning is given. This means that any misconduct in the next 12 months is likely to lead to (at least) a final written warning.

14.2 Final written warnings will remain live on file for 18 months from the date the final warning is given. This means that any future misconduct whilst that warning is 'live' may result in dismissal.

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

15.1 At a misconduct hearing in addition to the outcomes available above the persons conducting the hearing will also have available the outcomes of:

**a) Dismissal with notice** - The notice period should be determined by the persons conducting the hearing subject to a minimum of 28 days.

**b) Dismissal without notice** - Dismissal without notice will mean the individual is dismissed from the police service with immediate effect.

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

16.1 An appeal against the finding and/or the outcome from a misconduct meeting will be heard by a police officer or police staff manager who in the opinion of the Appropriate Authority is considered to be of a higher rank or grade than the person who conducted the misconduct meeting and who have had no previous involvement in the investigation of the case or in the misconduct meeting.

16.2 In addition an HR advisor totally unconnected with the case may also be present to advise the person conducting the appeal on procedural matters only.

16.3 If the conduct was admitted, the individual may only appeal against the outcome. If the conduct was denied, the individual may appeal against both the finding and/or the outcome.

16.4 The individual concerned must give written notice of appeal stating the grounds for appeal to the Appropriate Authority within 7 working days commencing the first working day following service of the notice of outcome (unless this period is extended by the Appropriate Authority in exceptional circumstances).

16.5 The grounds for appeal are as follows:

- The finding and/or outcome imposed was unreasonable.
- There is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on outcome.
- That there was a serious breach of procedures or other unfairness which could have materially affected the finding or decision on outcome.

16.6 Following receipt of the notice of appeal the appropriate authority shall as soon as practicable give the individual written notice of the appeal meeting and the person appointed to hear the appeal and the person appointed to act as advisor (if applicable). The individual may object to the person appointed to conduct the appeal meeting or the person named to act as advisor. Any objection must be in writing and submitted to the Appropriate Authority within 3 working days commencing the first working day following service of the notice of appeal meeting. The appropriate authority will notify the individual concerned whether he/she upholds or rejects the objections. If the objections are upheld the person(s) to whom the individual concerned objects will be replaced

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

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

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

16.9 If the individual and/or trade union representative or work place companion are not available at the date or time specified by the persons conducting the appeal, the individual may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after that proposed by the persons conducting the appeal the appeal should be postponed to that time.

16.10 The person conducting the appeal may consider:

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

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

16.11 The person determining the appeal may confirm or reverse the decision appealed against. Where the person determining the appeal decides that the original misconduct meeting outcome imposed was too lenient then they may increase the outcome up to a maximum of a final written warning.

16.12 An appeal is not a repeat of the misconduct meeting. It is to examine a particular part(s) of the misconduct case which is under question and which may affect the finding or the outcome.

16.13 The individual concerned shall be notified in writing by or on behalf of the person conducting the appeal meeting giving details of the determination of the appeal within 3 working days of the conclusion of the appeal meeting.

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

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

17.2 Where the final outcome was up to and including a final written warning the appeal will be heard by the Head of Human Resources or a senior officer (ACPO) and an H.R. professional. . All must be of higher rank or grade than the persons who conducted the misconduct hearing and who have had no previous involvement in the investigation of the case or in the misconduct hearing which followed.

17.3 An HR manager totally unconnected with the case may also be present to advise the persons conducting the appeal on procedural matters only.

17.4 Where the final outcome was dismissal with or without notice then the appeal will be heard by the Appeals Panel of the Police Authority.

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

17.6 The individual concerned must give written notice of appeal stating the grounds for appeal to the Appropriate Authority within 7 working days commencing the first working day following service of the notice of outcome (unless this period is extended by the appropriate authority in exceptional circumstances).

17.7 The grounds for appeal are as follows:-

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

17.8 Following receipt of the notice of appeal the appropriate authority shall as soon as practicable give the individual written notice of the appeal meeting and the persons appointed to hear the appeal and the person appointed to act as advisor. The individual may object to any of the persons appointed to conduct the appeal meeting or the person named to act as advisor. Any objection must be in writing and submitted to the Appropriate Authority within 3 working days commencing the first working day following service of the notice of appeal meeting. The appropriate authority will notify the individual concerned whether he/she upholds or rejects the objections, if the objections are upheld the person(s) to whom the individual concerned objects will be replaced.

17.9 The persons appointed to deal with the appeal will hold an appeal meeting within 14 days of the receipt of the appeal by the individual. The individual has the right to be represented by a trade union representative or work place companion at an appeal meeting. Where the individual fails to attend the meeting without good cause, the persons conducting the appeal may proceed in their absence.

17.10 Following the determination to hold an appeal meeting the persons appointed to conduct the appeal and the individual should seek to agree the date and time of the appeal meeting. If no date and time can be agreed then the persons appointed to hear the appeal shall specify a date and time. If the individual concerned and/or the trade union representative or work place companion is not available at the date or time specified by the persons conducting the appeal, the individual may propose an alternative time. Provided that the alternative time is reasonable and falls within a period of 5 working days beginning with the first working day after the specified date and time the appeal must be postponed to that time.

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

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

17.12 The persons conducting the appeal may consider:

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

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

17.14 An appeal is not a repeat of the misconduct hearing. It is to examine a particular part(s) of the misconduct case which is under question and which may affect the finding or the outcome.

## **18. SUSPENSION**

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

18.2 Suspension will be with full pay and allowances.

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

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

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

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

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

18.7 Notification of suspension from work may be given orally or in writing. If given orally it will be confirmed in writing within 3 working days setting out the conditions of the suspension and details of the appointed liaison officer. The written notice shall contain the following information:

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

18.8 The individual concerned, or his or her trade union representative or a work place companion, may make representations against his/her suspension to the Appropriate Authority within 7 working days of being suspended or at any time during the suspension if he/she believes that the relevant circumstances have changed.

18.9 The Appropriate Authority will review the decision to suspend the individual concerned on a 4 weekly basis or sooner where facts become known which would suggest that suspension is no longer appropriate or at any time following receipt of formal representation from the individual. Following a review of the suspension conditions the individual concerned shall, within 3 working days, be notified of the outcome. If the suspension conditions remain satisfied the individual concerned shall be given a summary of the reasons.

18.10 An individual suspended from work shall still be allowed to take their annual leave entitlement in the normal way whilst so suspended provided they seek permission from the appropriate authority.

18.11 The individual concerned may be suspended from employment at any time and will stay suspended until:

- It is decided that the conduct of the individual shall not be referred to a meeting/hearing.
- Such proceedings have been concluded.

**POLICE STAFF ONLY**

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

Name: \_\_\_\_\_ Employee number: \_\_\_\_\_

Name of complainant (if appropriate):

Case reference number: \_\_\_\_\_

This is to notify you that an allegation has been made that your individual conduct may have breached the Standards of Professional Behaviour and that there will be an investigation into the circumstances.

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

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

**Misconduct**

**Gross Misconduct**

**This may result in your attendance at a:**

**Misconduct Meeting**

**Misconduct Hearing**

---

(continue on separate sheet as necessary)

Name of person investigating \_\_\_\_\_

Contact Details (Address / Tel / E-mail) \_\_\_\_\_

Signature of person investigating \_\_\_\_\_ Date: \_\_\_\_\_

---

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

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

Print Name \_\_\_\_\_

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

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

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

Name:  
Date:

Signature:

## **EXPLANATORY NOTES**

1. This notice has been issued to inform you at the earliest possible stage that an allegation has been made that you may have breached the Standards of Professional Behaviour and that there is to be an investigation into your individual conduct in accordance with the force misconduct procedures.
2. The fact that you have been given this notice does not necessarily imply that misconduct proceedings will be taken against you but is given to safeguard your interests. It is given in order that you have the opportunity to secure any documentation or other material or make any notes that may assist you in responding to the allegation(s).
3. You have the right to seek advice from your trade union or a work place companion and be advised, represented and accompanied to any interview, meeting or hearing by a trade union representative or work place companion and who is not otherwise involved in the matter.
4. If following service of this notice the assessment of conduct or the determination of the likely form of any misconduct proceedings taken is revised then as soon as practicable you will be given a further written notice together with reasons for that change.
5. Prior to being interviewed or asked to provide a written response you will be provided with sufficient information and time to prepare for the interview/prepare your response. The information provided should always include full details of the allegations made against you, including the relevant date(s) and place(s) of the alleged misconduct. You should normally be provided with all relevant evidence obtained.
6. At the conclusion of the investigation, if direction is given to withdraw the case then upon request you shall, subject to a harm test, be provided with a copy of the investigator's report or such parts of that report as relate to you.
7. Where the case is referred to a misconduct meeting or hearing you will be given written notice of the referral, a copy of any statement made by you to the investigator, a copy, subject to a harm test, of the investigators report or such parts of that report as relate to you and any other relevant document gathered in the course of the investigation.
8. You should understand that any decision as to whether there is a case to answer that you may have breached the Standards of Professional Behaviour and whether the matter should be referred to a misconduct meeting or hearing will be based on an objective assessment of all the evidence provided during the course of the investigation. If the case is referred to a misconduct meeting or hearing,

then any decision on findings of fact will be determined on the standard of proof required in civil cases, which is the balance of probabilities.

9. Outcomes available in misconduct proceedings:

**Misconduct – Misconduct Meeting**

- Not proven
- No further action
- Management advice
- Written warning
- Final written warning

**Gross Misconduct – Misconduct Hearing**

- Not proven
- No further action
- Management advice
- Written warning
- Final written warning
- Dismissal with notice
- Dismissal without notice