

Ministry of Defence Police



Police Conduct Regulations 2009

Police Officer Misconduct

Policy, Guidance and Procedures

CONTENTS

Introduction	6
Delegated authority	6
Glossary	6 – 8
Police Friend	8 – 9
Chapter 1 - Guidance on Standards of Professional Behaviour	
Introduction	10
<u>Standards of Professional Behaviour</u>	
Honesty and Integrity	11 - 12
Authority, Respect and Courtesy	12
Equality and Diversity	12 - 13
Use of Force	13 - 14
Orders and Instructions	14
Duties and Responsibilities	14 -15
Confidentiality	15
Fitness for Duty	15 - 16
Discreditable Conduct	16 - 17
Challenging and Reporting Improper Conduct	17 - 18
Chapter 2 - Guidance on Police Officer Misconduct Procedures	
General	19 – 20
Student police officers	20
Suspension, restricted or change of duty	20 - 22
Conducting investigations where there are possible or outstanding criminal proceedings	22 - 23
Misconduct action following criminal proceedings	23 – 24

Fast Track (Special Cases)	24
Link between Misconduct Procedures and complaints, conduct matters and Death or Serious Injury cases to which the Police Reform Act 2002 applies	24 - 25
Complaints- Local Resolution	25
Complaints- Investigation	25 - 26
Special requirements	26
Severity assessment	26 - 27
Investigation of Conduct matters	27 - 28
Investigation report following complaint (subject of special requirements)/recordable conduct matter investigation	28
Referring a matter to misconduct proceedings following investigation of a complaint or recordable conduct matter	28 – 29
Death or Serious Injury matters (DSI)	29
<u>Misconduct Procedures</u>	
Assessment of conduct-(Is the case one of misconduct?)	29 - 30
Definitions	30 - 31
Severity assessment- Is the matter potentially misconduct or gross misconduct?	31 – 32
Dealing with misconduct	32
Management action	32 - 33
Taking further disciplinary proceedings	33 - 34
Written notification to police officer concerned	34 - 36
Appointment of investigator	36 - 37
Investigation	37 - 38
Interviews during investigation	38 - 40
Moving between Misconduct and Restoring Efficiency	40 - 41
Investigation report and supporting documents	41 - 42

Action prior to misconduct meetings/hearings	42 - 45
Documents for the meeting / hearing	45
Witnesses	45 - 46
Misconduct meetings/hearings	46 - 47
Timing for holding meetings/ hearings	47
Purpose of misconduct meeting/hearing	47 - 48
Person(s) appointed to hold misconduct meetings/hearings	48
Misconduct meeting-Non senior officers	48
Misconduct hearing- Non senior officers	48
Misconduct meeting/hearing – Senior officers	48
Misconduct Hearings in Public	49
Joint Meetings/Hearings	49
Meeting/hearing in absence of police officer concerned	49 - 50
Conduct of misconduct meeting/hearings	50 - 51
Standard of proof	51
Outcomes of meetings / hearings	52
Outcomes available at misconduct meetings/hearings	52 - 54
Notification of the outcome	54 - 55
Expiry of Warnings	55
Special priority payment/competency related threshold payments	55
Attendance of complainant or interested person at misconduct proceedings	56
IPCC direction and attendance at meetings/hearings	57
Right of Appeal	57 - 58
Appeal following misconduct meeting/hearing – non senior officers	58 – 59

Appeal following misconduct hearing – non senior officers 59

Appeals against misconduct meetings/hearings
- senior officers 60

Annex A - Fast Track Procedures (special cases)

Annex B

Misconduct Meetings /hearings- Chief Constables
Misconduct Meetings /hearings- Other senior officers

Principles and aims

INTRODUCTION

1. This guidance covers the Standards of Professional Behaviour for police officers, and sets out the procedures for dealing with misconduct, and for appeals to the Police Appeals Tribunal. The procedures described in this guidance are designed to accord with the principles of natural justice and the basic principles of fairness, and should be administered accordingly.
2. The guidance is issued by the MDP and is derived from the Home Office Guidance which is issued by the Secretary of State in accordance with the provisions of section 87(1) of the Police Act 1996. This guidance will be force policy and as such, those who are responsible for administering the procedures described in this guidance are reminded that they are required to take its provisions fully into account when discharging their functions. Whilst it is not necessary to follow its terms exactly in all cases, the guidance should not be departed from without good reason. This guidance is not a definitive interpretation of the relevant legislation. Interpretation is ultimately a matter for the courts. Where examples are given in this guidance they are not intended to be exclusive or exhaustive.
3. The guidance on the individual procedures is designed to further the aims of being fair to the individual police officer and of arriving at a correct assessment of the matter in question and providing confidence in the system.
4. The misconduct procedures set out in this guidance apply to all Ministry of Defence police officers.

Delegated authority

5. Where reference is made to 'the appropriate authority' and the appropriate authority is the chief constable, he or she may delegate any of his or her functions to a police officer of at least the rank of chief inspector
6. However for any decision regarding the suspension of a police officer, a decision whether to refer a misconduct matter to a special case hearing shall be authorised by a senior officer.
7. The misconduct procedures are designed to be dealt with at the lowest appropriate managerial level having regard to all the circumstances of the particular matter.

Glossary

8. Throughout the guidance, the terms used have the same meaning as the same terms used in Conduct Regulations. In particular, the following terms will be used: -

(a) "the 1987 Act" means the Ministry of Defence Police Act 1987

- (b) “the 1998 Act” means the Police (Northern Ireland) Act 1998
- (c) “the 2002 Act” means the Police Reform Act 2002
- (d) “the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006
- (e) “the Conduct Regulations” means the Ministry of Defence Police (Conduct) Regulations 2009
- (f) “the Complaints Regulations” means the Police (Complaint and Misconduct) Regulations 2004 as amended by the Police (Complaint and Misconduct) (Amendment) Regulations 2008;
- (g) “Agency staff member” means any person other than a police officer who is employed in the Ministry of Defence Police and Guarding Agency;
- (h) “Appropriate authority” means:
 - (i) Where the officer concerned is a senior officer, the Police Committee;
 - (ii) In any other case, the chief constable.
- (i) “the IPCC” means the Independent Police Complaints Commission established under the 2002 Act;
- (j) “IPCC statutory guidance” means the Independent Police Complaints Commission Statutory Guidance ‘Making the new complaints system work better’
- (k) “misconduct proceedings” means a misconduct meeting or misconduct hearing
- (l) “the PCCS” means the Police Complaints Commissioner for Scotland established under the 2006 Act
- (m) “the Police Committee” means the Ministry of Defence Police Committee, and includes the sub-committee of the Police Committee
- (n) “the PONI” means the Police Ombudsman for Northern Ireland established under the 1998 Act;
- (o) “the PSD” means the Professional Standards Department in the Agency

(p) “relevant lawyer” has the same meaning in the Conduct Regulations and includes a solicitor or barrister; these terms are used throughout this guidance.

Police Friend

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

The police officer concerned may choose a police officer from the MDP or another police force, an Agency staff member or a person nominated by the police officer’s staff association to act as his or her police friend. A person approached to be a police friend is entitled to decline to act as such.

A police friend cannot be appointed to act as such if he or she has had some involvement in that particular case e.g. he or she is a witness etc.

The police friend can:

- a. Advise the police officer concerned throughout the proceedings under the Conduct Regulations
- b. Unless the police officer concerned has the right to be legally represented and chooses to be so represented, represent the police officer concerned at the misconduct proceedings, appeal meeting, a special case hearing or at a Police Appeals Tribunal.
- c. Make representations to the appropriate authority concerning any aspect of the proceedings under the Conduct Regulations; and
- d. Accompany the police officer concerned to any interview, meeting or hearing which forms part of any proceedings under the Conduct or Regulations.

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

A police friend who is a police officer or Agency staff member under the direction and control of the Chief Constable is entitled to take a reasonable amount of duty time to fulfil his or her responsibilities as a police friend and should be considered to be on duty when attending interviews, meetings or hearings.

Subject to any timescales set out in the Conduct Regulations, at any stage of a case, up to and including a misconduct meeting or hearing, the police officer concerned or his or her police friend may submit that there are insufficient grounds upon which to base the case and/or that the correct procedures have not been followed, clearly setting out the reasons and submitting any supporting

evidence. It will be for the person responsible for the relevant stage of the case to consider any such submission and determine how best to respond to it, bearing in mind the need to ensure fairness to the police officer concerned.

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

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

A police officer is entitled to be legally represented at a misconduct hearing or special case hearing. Where he or she decides to be so represented, the police friend can also attend and may consult with the police officer concerned, but will not carry out functions a-f described above.

Where a police officer is arrested or interviewed in connection with a criminal offence committed whilst off duty that has no connection with his or her role as a serving police officer, then the police friend has no right to attend the criminal interview(s) of that police officer.

It is not the role of the police friend to conduct his or her own investigation into the matter. (See paragraph 2.117 regarding the opportunity to provide information to the investigator)

Where a police friend from another police force is acting as such for a MDP officer, then the appropriate authority for the police friend should pay the reasonable expenses of the police friend.

CHAPTER 1

Guidance on Standards of Professional Behaviour

Introduction

1.1 Public confidence in the police is crucial in a system that rests on the principle of policing by consent. Public confidence in the police depends on police officers demonstrating the highest level of personal and professional standards of behaviour. The standards set out below reflect the expectations that the police service 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 this guidance.

1.2 The standards of professional behaviour also reflect relevant principles enshrined in the European Convention on Human Rights and the Council of Europe Code of Police Ethics. They apply to police officers of all ranks from Chief Constable to Constable and to those subject to suspension.

1.3 The standards set out below do not restrict police officers' discretion; rather they define the parameters of conduct within which that discretion should be exercised. A breach of these high standards may damage confidence in the police service and could lead to action for misconduct, which in serious cases could involve dismissal.

1.4 The public have the right to expect the force to protect them by upholding the law and providing a professional police service. Police officers have the right to a working environment free of harassment or discrimination from others within the service.

1.5 Those entrusted to supervise and manage others are role models for delivering a professional, impartial and effective policing service. They have a particular responsibility to maintain standards of professional behaviour by demonstrating strong leadership and by dealing with conduct which has fallen below these standards in an appropriate way, such as by management action or the formal misconduct process. Above all else police managers should lead by example.

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

1.7 The police service has a responsibility to keep police officers informed of changes to police regulations, local policies, laws and procedures.

Police officers have a duty to keep themselves up to date on the basis of the information provided.

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

1.9 This guidance gives examples to help police officers interpret the standards expected in a consistent way. They are not intended to be an exclusive or exhaustive list.

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

1.11 It should be remembered that the MOD Restoring Efficiency and attendance procedures co-exist to deal with unsatisfactory performance, attendance and issues of capability.

Honesty and Integrity

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

1.13 Police officers act with integrity and are open and truthful in their dealings with the public and their colleagues, so that confidence in the police service is secured and maintained.

1.14 Police officers do not knowingly make any false, misleading or inaccurate oral or written statements or entries in any record or document kept or made in connection with any police activity.

1.15 Police officers never accept any gift or gratuity that could compromise their impartiality. During the course of their duties police officers may be offered hospitality (e.g. refreshments) and this may be acceptable as part of their role. However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation.

1.16 It is not anticipated that inexpensive gifts would compromise the integrity of a police officer, such as those from conferences (e.g. promotional products) or discounts aimed at the entire police force (e.g. advertised discounts through police publications). However, all gifts and gratuities must be declared in accordance with the force policy where authorisation may be required from a manager, the chief constable or the Police Committee to accept a gift or hospitality. If a police officer is in any doubt then they should seek advice from their manager.

1.17 Police officers never use their position or warrant card to gain an unauthorised advantage (financial or otherwise) that could give rise to the impression that the police officer is abusing his or her position. A warrant card is only to confirm identity or to express authority.

Authority, Respect and Courtesy

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

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

1.20 In exercising their duties, police officers never abuse their authority or the powers entrusted to them. Police officers are well placed to protect individuals and groups within society. They have been given important powers and responsibilities due to the complex and difficult situations they deal with. The public have the right to expect that such powers are used professionally, impartially and with integrity, irrespective of an individual's status.

1.21 Police officers do not harass or bully colleagues or members of the public. Challenging conduct or unsatisfactory performance or attendance in an appropriate manner would not constitute bullying.

1.22 Police officers do not, under any circumstances inflict, instigate or tolerate any act of inhuman or degrading treatment (as enshrined in Article 3 of the European Convention on Human Rights).

1.23 Police officers, recognise that some individuals who come into contact with the police, such as victims, witnesses or suspects, may be vulnerable and therefore may require additional support and assistance.

1.24 Police officers use appropriate language and behaviour in their dealings with their colleagues and the public. They do not use any language or behave in a way that is offensive or is likely to cause offence.

1.25 Like all professionals, police officers have special knowledge and experience that many others do not possess (for example what may or may not constitute an offence). Police officers do not take unfair advantage of the inequality that arises from a member of the public being ill-equipped to make an informed judgement about a matter in respect of which he or she does not have the special knowledge of the police officer.

Equality and Diversity

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

1.27 Police officers carry out their duties with fairness and impartiality and in accordance with current equality legislation. In protecting others' human rights, they act in accordance with Article 14 of the European Convention on Human Rights.

1.28 Police officers need to retain the confidence of all communities and therefore respect all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law. In particular police officers do not discriminate unlawfully or unfairly when exercising any of their duties, discretion or authority.

1.29 Police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.

1.30 Police managers have a particular responsibility to support the promotion of equality and by their actions to set a positive example.

1.31 Different treatment of individuals which has an objective justification may not amount to discrimination.

Use of Force

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

1.33 There will be occasions when police officers may need to use force in carrying out their duties, for example to effect an arrest or prevent harm to others.

1.34 It is for the police officer to justify his or her use of force but when assessing whether this was necessary, proportionate and reasonable all of the circumstances should be taken into account and especially the situation which the police officer faced at the time. Police officers use force only if other means are or may be ineffective in achieving the intended result.

1.35 As far as it is reasonable in the circumstances police officers act in accordance with their training in the use of force to decide what force may be necessary, proportionate and reasonable. Section 3 of the Criminal Law Act 1967, section 117 of the Police and Criminal Evidence Act 1984 and common law make it clear that force may only be used when it is reasonable in the circumstances.

1.36 Article 2 (2) of the European Convention on Human Rights provides a stricter test for the use of lethal force. The use of such force must be no more than is absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) in action lawfully undertaken to quell a riot or insurrection.

1.37 Police officers respect everyone's right to life (as enshrined in Article 2 of the European Convention on Human Rights) and do not, under any circumstances, inflict, instigate or tolerate any act of torture, inhuman or degrading treatment or punishment (Article 3).

Orders and Instructions

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

1.39 Police officers abide by police regulations (as applicable to the MDP), force policies and lawful orders.

1.40 The force is a disciplined body and therefore any decision not to follow an order or instruction will need to be fully justified.

1.41 There may however be instances when failure to follow an order or instruction does not amount to misconduct. This may be for example where the police officer reasonably believed that a lawful order was in fact unlawful or where a police officer had good and sufficient reason not to comply having regard to all the circumstances and possible consequences.

1.42 Police officers do not give orders or instructions which they do not reasonably believe are lawful.

1.43 Police officers, to the best of their ability, support their colleagues in the execution of their lawful duty.

1.44 Police officers abide by police regulations and force policies and accept the restrictions on their private lives as contained in the Ministry of Defence Statement of civilian personnel policy outside appointments and activities; and also contained in letters of appointment.

Duties and Responsibilities

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

1.46 Police officers do not neglect their duties or responsibilities.

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

1.48 Police officers ensure that accurate records are kept of the exercise of their duties and powers as required by relevant legislation, force policies and procedures.

1.49 In carrying out their duties police officers have a responsibility to exercise reasonable care to prevent loss of life or loss or damage to the property of others (including police property).

Confidentiality

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

1.51 The force shares information with other agencies and the public as part of its legitimate policing business. Police officers never access or disclose any information that is not in the proper course of police duties and do not access information for personal reasons. Police officers who are unsure if they should access or disclose information should always consult with their manager or the MDP Data Protection Officer before accessing or disclosing it.

1.52 Police officers do not provide information to third parties who are not entitled to it. This includes for example, requests from family or friends, approaches by private investigators and unauthorised disclosure to the media.

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

Fitness for Duty

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

1.55 Police officers do not make themselves unfit or impaired for duty as a result of drinking alcohol, using an illegal drug or using a substance for non-medical purposes or intentionally misusing a prescription drug.

1.56 Police officers who present themselves to their force with a drink or drugs misuse problem will be supported if they demonstrate an intention to address the problem and take steps to overcome it. However, the use of illegal drugs will not be condoned. A self declaration made after a police officer is notified of the requirement to take a test for possible substance misuse cannot be used to frustrate action being taken for misconduct that may follow a positive test result.

1.57 Police officers who are aware of any health concerns that may impair their ability to perform their duties should seek guidance from the occupational health department and if appropriate reasonable adjustments can be made.

1.58 A police officer who is unexpectedly called to attend for duty and considers that he or she is not fit to perform such duty should say that this is the case.

1.59 Police officers when absent from duty, on account of sickness or injury, do not engage in activities that are likely to impair their return to duty. Police officers will engage with the occupational health team if required and follow any advice given unless there are reasonable grounds not to do so.

Discreditable Conduct

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

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

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

1.63 In the interests of fairness, consistency and reasonableness the test is not solely about media coverage but has regard to all the circumstances.

1.64 Police officers are required to report as soon as reasonably practicable to the force on any occasion in the UK or elsewhere where they have been subject to arrest, a summons for an offence, a penalty notice for disorder, an endorsable fixed penalty notice for a road traffic offence, or a charge or caution for an offence by any enforcement agency.

1.65 They must also report as soon as reasonably practicable all convictions and sentences and conditions imposed by any court, whether criminal or civil (excluding matrimonial proceedings (but including non-molestation orders or occupation orders)). 'Conditions imposed by a court' would include, for example, the issue of an Anti-Social Behaviour Order, a restraining order, or a bind-over.

1.66 A police officer being subject to any of these measures could discredit the force and may result in action being taken for misconduct against him or her depending on the circumstances of the particular matter.

1.67 Police officers do not purchase or consume alcohol when on duty, unless specifically authorised to do so or it becomes necessary for the proper discharge of a particular police duty.

1.68 Police officers on duty whether in uniform or in plain-clothes, display a positive image of the force in the standard of their appearance which is appropriate to their operational role.

1.69 Police officers attend punctually when rostered for duty or other commitment (e.g. attendance at court).

Off-duty conduct

1.70 Police officers have some restrictions on their private life. These restrictions are contained in the Ministry of Defence Statement of civilian personnel policy outside appointments and activities and in their letters of appointment. These restrictions have to be balanced against the right to a private life. Therefore, in considering whether a police officer has acted in a way which falls below these standards while off-duty, due regard should be given to that balance and any action should be proportionate taking into account all of the circumstances.

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

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

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

1.74 When police officers produce their warrant card (other than for identification purposes only) or act in a way to suggest that they are acting in their capacity as a police officer (e.g. declaring that they are a police officer) they are demonstrating that they are exercising their authority and have therefore put themselves on duty and will act in a way which conforms to these standards.

1.75 An approved business interest should always be carried out in a way that does not compromise or give the impression of compromising the police officer's impartiality and is not incompatible with membership of the force as contained in the Ministry of Defence Statement of civilian personnel policy outside appointments and activities

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

Challenging and Reporting Improper Conduct

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

1.78 Police officers are expected to uphold the standards of professional behaviour in the force by taking appropriate action if they come across the

conduct of a colleague which has fallen below these standards. They never ignore such conduct.

1.79 Police officers who in the circumstances feel they cannot challenge a colleague directly, for example if they are a more junior rank and are not confident, report their concerns, preferably to a line manager. If they do not feel able to approach a line manager with their concerns, they may report the matter through the force's confidential reporting mechanism, or to the Police Committee or the IPCC, PCCS or PONI.

1.80 Police officers are supported by the force if they report conduct by a police officer which has fallen below the standards expected unless such a report is found to be malicious or otherwise made in bad faith.

1.81 It is accepted that the circumstances may make immediate action difficult but police managers are expected to challenge or take action as soon as possible.

1.82 It is accepted however that it will not always be necessary to report a police officer's conduct if the matter has been dealt with appropriately by a manager in the force.

CHAPTER 2

Guidance on Police Officer Misconduct Procedures

General

2.1 This procedure applies to all police officers and underpins the Standards of Professional Behaviour which set out the high standards of behaviour that the force and the public expect of police officers. Any failure to meet these standards may undermine the important work of the force and public confidence in it.

2.2 This guidance applies to the handling of misconduct cases that have come to the notice of the appropriate authority on or after the 1st December 2009 and the previous MOD Police guidance will apply to cases being dealt with under the Ministry of Defence Police (Conduct) Regulations 2004 and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004.

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

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

2.5 The misconduct procedure has been prepared by the Home Office in consultation with the Association of Chief Police Officers (ACPO), the Police Federation of England and Wales (PFEW), the Police Superintendents' Association of England and Wales (PSAEW), the Chief Police Officers' Staff Association (CPOSA), the Association of Police Authorities (APA), Her Majesty's Inspectorate of Constabulary (HMIC) and the IPCC, the devolved authorities and the PCCS and PONI.

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

2.7 It is important that managers understand their responsibility to respond to, and deal promptly, and effectively with, unsatisfactory behaviour and complaints about police conduct from members of the public and/or colleagues. It is a key responsibility of all managers to understand and apply the procedure in a fair, proportionate and timely manner.

2.8 The force will support any manager who has exercised his or her judgement reasonably and adhered to the guidance provided.

2.9 Where the conduct is linked to a complaint, recordable conduct matter or death or serious injury matter (as defined in section 12 of, and paragraph 11 of Schedule 3 to, the 2002 Act) the appropriate authority is required to follow the provisions in the Police Reform Act 2002 (the “2002 Act”), the accompanying Police (Complaints and Misconduct) Regulations 2004 (the “Complaint Regulations”) and the IPCC statutory guidance which set out how complaints by members of the public are to be dealt with. Separate arrangements apply to officers in MDP officers Scotland (under the 2006 Act) and MDP officers in Northern Ireland (under the 1998 Act) and PSD should be contacted for advice.

2.10 The misconduct procedures should not be used as a means of dealing with unsatisfactory performance (see assessment stage at paragraph 2.71). The MOD restoring efficiency and attendance procedures exist to deal with issues of individual unsatisfactory performance and attendance.

Student Officers

2.11 Student police officers are subject to the misconduct procedures. The chief constable has discretion whether to use the misconduct procedures as the most appropriate means of dealing with a misconduct matter. In exercising this discretion due regard should be had 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.

Suspension, restricted or change of duty

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

- a. An effective investigation may be prejudiced unless the police officer is suspended; or
- b. The public interest, having regard to the nature of the allegation and any other relevant considerations, requires that the police officer should be suspended; and
- c. A temporary move to a new location or role has been considered but is not appropriate in the circumstances

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

2.14 While suspended, a police officer ceases to hold the office of constable and ceases to be a member of the force, save for the purposes of the misconduct proceedings.

2.15 Where it is decided that the police officer will be suspended from duty or moved to alternative duties, this will be with pay. The rate of any pay will be

that which applied to the police officer at the time of suspension. Therefore if the police officer concerned was in receipt of a Special Priority Payment or a Competency Related Threshold Payment at the time of his or her suspension or temporary move to a new location or role as an alternative to suspension, those payments will continue to apply.

2.16 Pay will be withheld when a police officer who is suspended:

- a. is detained in pursuance of a sentence of a court in a prison or other institution to which the Prison Act 1952 applies, or is in custody (whether in prison or elsewhere) between conviction by a court and sentence, or
- b. has absented him or herself from duty and whose whereabouts are unknown to the chief constable (or an assistant chief constable acting as the chief constable) or in the case of a senior officer the Police Committee.

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

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

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

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

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

2.22 Suspension must be authorised by a senior officer although the decision can be communicated to the police officer by an appropriate manager. The Police Committee is responsible for dealing with the suspension of a senior officer.

2.23 In cases where the IPCC or PONI are supervising, managing or independently investigating a matter, the appropriate authority will consult with the IPCC or PONI before making a decision whether to suspend or not. It is

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

2. 24 In cases where the 2002 Act applies, the investigator will be responsible for ensuring that the appropriate authority is supplied with sufficient information to enable it to effectively review the need for continuing the suspension.

2. 25 The Standards of Professional Behaviour continue to apply to police officers who are suspended from duty. The appropriate authority can impose such conditions or restrictions on the police officer concerned as are reasonable in the circumstances e.g. restricting access to MOD premises or MOD or MDP social functions.

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

Conducting investigations where there are possible or outstanding criminal proceedings

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

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

or a special case hearing will take place if this would prejudice the criminal proceedings.

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

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

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

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

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

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

Misconduct action following criminal proceedings

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

2.36 A previous acquittal in criminal proceedings in respect of an allegation which is the subject of misconduct or special case proceedings is a

relevant factor which should be taken into account in deciding whether to continue with those proceedings.

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

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

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

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

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

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

Fast track procedures (special cases)

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

Link between Misconduct Procedures and complaints, conduct matters and Death or Serious Injury cases to which the Police Reform Act 2002 (the 2002 Act) applies

2.42 In relation to England and Wales, the 2002 Act and the Complaint Regulations set out how complaints, conduct matters and death or serious injury (DSI) matters must be handled. Different complaints procedures are applicable to MDP officers in Scotland (under the 2006 Act) and MDP officers

in Northern Ireland (under the 1998 Act) and PSD should be consulted for advice in relation to those officers. For the purposes of this guidance, only complaints procedures in relation to MDP officers in England and Wales will be covered, where the relevant legislation is the 2002 Act and the Complaints Regulations.

2.43 The 2002 Act and the Complaint Regulations also set out the matters that are required to be referred to the Independent Police Complaints Commission (IPCC). If the matter involves a police officer serving in NI or Scotland it must be referred to the appropriate authority for direction in the first instance.

Complaints – Local Resolution, England and Wales

2.44 The 2002 Act, Complaint Regulations and IPCC statutory guidance set out when complaints are suitable for Local Resolution and these procedures will continue to apply. It may be appropriate in dealing with a complaint using Local Resolution for a manager to take management action in addition and this is perfectly acceptable. However this will not be considered as formal disciplinary action although it does not prevent a manager from initiating Management Action.

Complaints – Investigation, England and Wales

2.45 Where a complaint about the conduct of a police officer is not suitable to be resolved using the Local Resolution procedure or that procedure fails then the matter will need to be investigated under the provisions of the 2002 Act and the Complaint Regulations.

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

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

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

- a. When a complaint is subject of special requirements (see paragraph 2.49);
- b. when a severity assessment must be made;
- c. the information required to be notified to the police officer concerned;

- d. the duty of the investigator to consider relevant statements and documents;
- e. arrangements for interviewing the person whose conduct is being investigated; and
- f. the matters to be included in the investigation report.

Special requirements

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

- a. committed a criminal offence, or
- b. behaved in a manner which would justify the bringing of disciplinary proceedings,

the person investigating (the investigator) must certify the investigation as one subject to special requirements (paragraph 19A of Schedule 3 to the 2002 Act). Conduct matters, by definition, are subject to the special requirements.

2.50 Where the person investigating does not consider that the conduct subject of the investigation either amounts to a criminal offence or (even if proven or admitted) would (in the investigator's judgement) be referred to a misconduct meeting or hearing, the matter will not be subject of the special requirements and no Regulation 14A (Complaint Regulations) notice will be served on the police officer concerned and no severity assessment will be required. If the person investigating the complaint does certify the investigation as one subject of special requirements, the investigator must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct (see below).

Severity assessment

2.51 The severity assessment means an assessment as to:

- a. whether the conduct of the police officer concerned, if proved,
- b. would amount to misconduct or gross misconduct, and
- c. if misconduct, the form (i.e. misconduct meeting or hearing) which disciplinary proceedings would be likely to take if the conduct were to become subject of such proceedings.

2.52 The severity assessment may only be made after consultation with the appropriate authority. The investigator shall ensure that a written notice is provided to the police officer concerned informing him or her that his or her

conduct is being investigated unless the person investigating the complaint considers that giving the notification might prejudice:

- a. the investigation; or
- b. any other investigation (including, in particular, a criminal investigation).

(See paragraph 2.103 regarding written notices)

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

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

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

Investigation of Conduct matters, England and Wales

2.56 A conduct matter is defined in the Police Reform Act 2002 as:

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

- a. committed a criminal offence; or
- b. behaved in a manner which would justify the bringing of disciplinary proceedings’.

2.57 Paragraphs 10 and 11 of Schedule 3 to the 2002 Act and regulation 5 of the Complaint Regulations set out the conduct matters that are required to be recorded by the appropriate authority (recordable conduct matters).

2.58 Paragraph 13 of Schedule 3 to the 2002 Act and regulation 5 to the Complaint Regulations set out the categories of recordable conduct matters that are required to be referred to the IPCC.

2.59 Conduct matters that are not required to be recorded or referred to the IPCC may be dealt with by the appropriate authority. Where the appropriate authority determines that these conduct matters should be investigated, then this will be conducted under the provisions of the Conduct Regulations.

2.60 Recordable conduct matters are subject to the special requirements mentioned at paragraph 2.49 above and therefore the person investigating the matter will be required to undertake a severity assessment (see paragraphs 2.51 to 2.55 above) and comply with the special requirements.

Investigation report following complaint (subject of special requirements)/recordable conduct matter investigations, England and Wales.

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

2.62 The action that an appropriate authority proposes or does not propose to take in response to an investigation of a complaint may be subject to an appeal by a complainant. The IPCC also has the power in certain cases to recommend and direct that particular misconduct proceedings are held in respect of complaint and recordable conduct investigations (see further paragraph 2.150). If the matter involves a police officer serving in NI or Scotland it must be referred to the appropriate authority for direction in the first instance.

Referring a matter to misconduct proceedings following investigation of a complaint (subject of special requirements) or a recordable conduct matter, England and Wales.

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

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

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

2.66 In cases where there is a case to answer in respect of gross misconduct then the matter shall be referred to a misconduct hearing (or if the special conditions are satisfied a special case (fast track) hearing).

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

Death or Serious Injury matters (DSI), England and Wales

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

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

Misconduct Procedures – applicable to all MDP officers throughout the UK

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

2.70 Where an allegation is made against the conduct of a police officer being a matter that does not involve a complaint, a recordable conduct matter or a death or serious injury (see paragraph 2.42 above), the matter will be dealt with under the Conduct Regulations from the outset. However, in the same way as described in paragraph 2.51 above, the appropriate authority must formally assess whether the conduct alleged, if proved, would amount to misconduct or gross misconduct.

2.71 The assessment may determine that the conduct alleged amounts to an allegation of unsatisfactory performance rather than one of misconduct. In such circumstances the matter should be referred to be dealt with under the Restoring Efficiency Procedures

2.72 The assessment may determine that the matter is more suitable to be dealt with through the grievance procedure or may be an issue of direction

and control. In such cases the procedures for dealing with such matters should be used.

2.73 The purpose of the initial assessment is to:

- a. Ensure a timely response to an allegation or an issue relating to conduct
- b. Identify the police officer subject to the allegation and to eliminate those not involved.
- c. Ensure that the most appropriate procedures are used.

2.74 The assessment should be made by the appropriate authority (see delegation of authority in the Introduction section and glossary definition).

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

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

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

Definitions

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

Misconduct

2.79 Misconduct is a breach of the Standards of Professional Behaviour (see chapter 1).

Gross Misconduct

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

Restoring Efficiency Procedures

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

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

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

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

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

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

2.85 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).

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

2.87 If the initial assessment has been made incorrectly or if new evidence emerges, then a fresh assessment can be made. The matter may be moved up to a level of gross misconduct or down to a level of misconduct. In the interests of fairness to the police officer, where a further severity assessment

is made which alters the original assessment then the police officer will be informed and will be provided with the reasons for the change in the assessment.

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

Dealing with misconduct

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

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

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

Management action

2.91 The purpose of management action is to:

- a. Deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the force and the public.
- b. Identify any underlying causes or welfare considerations.
- c. Improve conduct and to prevent a similar situation arising in the future.

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

2.93 Management action may include:

- a. Pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour
- b. Identifying expectations for future conduct.

- a. Establishing an improvement plan.
- c. Addressing any underlying causes of misconduct.

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

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

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

2.97 Where an appropriate manager decides at the severity assessment that management action is the most appropriate and proportionate way to deal with an issue of misconduct, there will be no requirement to conduct a formal investigation and therefore no requirement to give a written notice to the police officer concerned in accordance with the provisions in the Conduct Regulations. Where at a later stage, either following the investigation or on withdrawal of the case (under regulation 20 of the Conduct Regulations or Regulation 7 of the Complaint Regulations), an appropriate manager decides to take management action, written notice of this will be given to the police officer as soon as possible.

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

Taking further disciplinary proceedings

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

2.100 The purpose of taking further disciplinary proceedings is to:

- a. Establish the facts underlying the allegation.
- b. Deal with cases of misconduct in a timely, proportionate, fair and effective way such as will command the confidence of the police service and the public.
- c. Identify any underlying causes or welfare considerations.
- d. Identify any learning opportunities for the individual or the organisation.

2.101 The guidance set out above deals with the requirements for severity assessments to be conducted in cases to which the 2002 Act applies (for MDP officers in England and Wales only) and those cases dealt with under the Conduct Regulations (for MDP officers throughout the UK), including where appropriate the 1998 Act for MDP officers serving in Northern Ireland.

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

Written notification to officer concerned

2.103 Written notification will be given to the police officer concerned by the investigator appointed to investigate the case, advising him or her that his or her conduct is under investigation – either under Regulation 15 of the Conduct Regulations or under Regulation 14A of the Complaint Regulations (in the case of complaints subject to special requirements (see paragraph 2.49) and recordable conduct investigations). The notice will:

- a. Inform the police officer that there is to be an investigation of his or her potential breach of the Standards of Professional Behaviour and inform the police officer of the name of the investigator who will investigate the matter
- b. Describe the conduct that is the subject of the investigation and how that conduct is alleged to have fallen below the Standards of Professional Behaviour
- c. Inform the police officer concerned of the appropriate authority's (or investigator's in a matter dealt with under the 2002 Act) assessment of whether the conduct alleged, if proved, would amount to misconduct or gross misconduct

- d. Inform the police officer of whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or misconduct hearing
- e. Inform the police officer that if the likely form of any misconduct proceedings changes the police officer will be notified of this together with the reasons for that change
- f. Inform the police officer of his or her right to seek advice from his or her staff association or any other body and who the police officer may choose to act as his or her police friend.
- g. Inform the police officer that if his or her case is referred to a misconduct hearing or special case hearing, he or she has the right to be legally represented by a relevant lawyer. If the police officer elects not to be so represented then he or she may be represented by a police friend. The notice will also make clear that if he or she elects not to be legally represented then he or she may be dismissed or receive any other disciplinary outcome without being so represented.
- h. Inform the police officer that he or she may provide, within 10 working days of receipt of the notice (unless this period is extended by the investigator) a written or oral statement relating to any matter under investigation and he or she (or his or her police friend) may provide any relevant documents to the investigator within this time.
- i. Inform the police officer that whilst he or she does not have to say anything, it may harm his or her case if he or she does not mention when interviewed or when providing any information within the relevant time limits something which he or she later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or Police Appeals Tribunal.

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

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

2.106 The written notification may be provided to a manager (including by e mail) to give to the police officer concerned or where appropriate and with the agreement of the police friend the notice may be given to the police friend to give to the police officer concerned. In both cases the notice must be given to the police officer in person. Alternatively, the notice can be posted by recorded delivery to his or her last known address. The responsibility for

ensuring that the notice is served rests with the investigator (in cases dealt with under the 2002 Act or the 1998 Act) or the appropriate authority. (In both cases it is the investigator who must cause the officer concerned to be given the written notice. Therefore whilst the appropriate authority may do it, the responsibility for ensuring that the notice is served rests with the investigator.)

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

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

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

Appointment of investigator

2.110 Where the appropriate authority has assessed the allegation as being one of misconduct or gross misconduct and in the case of misconduct, has determined that the matter is not suitable for immediate management action then the appropriate authority will appoint an investigator. In cases being dealt with under the Conduct Regulations the investigator can be a police officer, another person employed in the Agency or any other person; and should be the most appropriate person having regard to all of the circumstances and the requirements set out in regulation 13 of the Conduct Regulations.

2.111 In England and Wales, cases falling under paragraphs 17 or 18 of Schedule 3 to the Police Reform Act 2002 the appropriate authority must follow the appropriate provisions regarding the approval of the investigator by the IPCC. The appropriate authority will also need to ensure that an investigator appointed under paragraphs 16, 17 or 18 of the 2002 Act has the necessary skills and experience as set out in regulation 18 of the Complaint Regulations¹. (See IPCC Statutory Guidance). Cases falling under paragraph 19 of Schedule 3 shall be investigated by the IPCC's own staff subject to Secretary of State having the power to nominate that person in the circumstances set out in paragraph 19(3) and (3A) of that Schedule. In Northern Ireland, the appropriate authority will need to consider, and where appropriate comply with the relevant provisions of the 1998 Act (in particular sections 54, 56 and 57); and PSD should be consulted for advice.

¹ As amended by the Police (Complaints and Misconduct) (Amendment) Regulations 2008

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

Investigation

2.113 The purpose of an investigation is to:

- a. Gather evidence to establish the facts and circumstances of the alleged misconduct
- b. Assist the appropriate authority to establish on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct or that there is no case to answer.
- c. Identify any learning for the individual or the organisation.

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

2.115 In cases which do not fall under the 2002 Act or the 1998 Act, the appropriate authority can discontinue an investigation if there is a change in circumstances which makes it appropriate to do so. Similarly, in cases which do fall under the 2002 Act or 1998 Act, the appropriate authority can apply to the IPCC or PONI to discontinue an investigation (see, in relation to England and Wales, paragraph 21 of Schedule 3 to the 2002 Act, paragraph 7 of the Complaint Regulations and the IPCC statutory guidance).

2.116 The investigator must ensure that the police officer is kept informed of the progress of the investigation. It is also good practice to keep the police officer informed of progress at the same time. The investigator is required to notify the police officer of the progress of the investigation at least every 4 weeks from the start of the investigation. The requirement under the Police Reform Act 2002 to keep the complainant or an interested person informed

will also apply in relevant cases (See Regulation 11 of the Complaint Regulations and the IPCC Statutory Guidance).

2.117 The police officer or his or her police friend, acting on the police officer concerned's instructions, is encouraged to suggest at an early stage any line of enquiry that would assist the investigation and to pass to the investigator any material they consider relevant to the enquiry. (See regulation 16 of the Conduct Regulations and paragraph 19C of Schedule 3 to the 2002 Act and Regulation 14C of the Complaint Regulations).

2.118 The investigator (under the Conduct Regulations or the 2002 Act or 1998 Act) has a duty to consider the suggestions submitted to him or her. The investigator should consider and document reasons for following or not following any submissions made by the police officer or his or her police friend with a view to ensuring that the investigation is as fair as possible. The suggestions may involve a further suggested line of investigation or further examination of a particular witness. The purpose is to enable a fair and balanced investigation report to be prepared and where appropriate made available for consideration at a misconduct meeting/hearing and to negate the need (except where necessary) for witnesses to attend a meeting/hearing.

Interviews during investigation

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

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

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

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

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

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

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

2.126 Care should be taken when conducting a misconduct interview where the police officer is also subject of a criminal investigation in respect of the same behaviour, as anything said by the police officer concerned in the misconduct interview when not under caution and used in the criminal investigation could be subject to an inadmissibility ruling by the court at any subsequent trial. If necessary, appropriate legal advice should be obtained.

2.127 At the beginning of a misconduct interview or when asking a police officer to provide a written response to an allegation, the police officer shall be reminded of the warning contained in regulation 15(1)(h) of the Conduct Regulations (or regulation 14A(1)(h) of the Complaint Regulations 2008 for cases dealt with under the 2002 Act) namely informing the police officer that whilst he or she does not have to say anything it may harm his or her case if he or she does not mention when interviewed or providing a written response something which he or she later relies on in any misconduct proceedings or special case hearing or appeal meeting or appeal hearing.

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

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

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

Moving between Misconduct and the Restoring Efficiency Procedures

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

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

2.133 A matter that appears initially to relate to misconduct may, on investigation, turn out to be a matter relating to unsatisfactory performance or attendance and should be transferred to the Restoring Efficiency Procedures, if appropriate, at the earliest opportunity. This can be done at any time before a misconduct meeting or hearing, in relation to a matter not dealt with under the 2002 Act or 1998 Act, by withdrawing the case against the police officer concerned under regulation 20 of the Conduct Regulations and referring the matter to be dealt with under the Restoring Efficiency Procedures. The police officer concerned shall be informed that the matter is no longer being investigated as a misconduct case.

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

that the police officer concerned may learn and improve his or her performance.

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

2.136 The appropriate authority in such cases should then decide if taking action against the police officer concerned using the Restoring Efficiency Procedures is a fair and reasonable exercise of discretion taking into account all of the circumstances of the case and in particular the same principles set out at paragraphs 2.39 and 2.40.

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

Investigation report and supporting documents

2.138 At the conclusion of the investigation the investigator must as soon as practicable submit his or her report of the investigation setting out an accurate summary of the evidence that has been gathered (regulation 18 of the Conduct Regulations or regulation 14E of the Complaint Regulations). The report shall also attach or refer to any relevant documents. It will also include a recommendation whether in the opinion of the investigator there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

2.139 In cases where the investigation was conducted under paragraphs, 16 (local), 17 (supervised), 18 (managed) or 19 (independent) of Schedule 3 to the 2002 Act (in England and Wales) then the investigator will submit his or her report with recommendations in accordance with paragraph 22 of schedule 3 to the 2002 Act. In relation to Northern Ireland, the equivalent provisions of the 1998 Act apply.

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

2.141 If it is decided that there is no case of misconduct to answer then management action may still be appropriate. In matters involving a complaint, where the complaint was subject to a local or supervised investigation under

the 2002 Act or 1998 Act, the decision of the appropriate authority may be subject to an appeal by the complainant to the IPCC (see IPCC Statutory Guidance) or PONI. Similarly in cases where an investigation into a complaint, recordable conduct matter or death or serious injury matter has been conducted under paragraph 18 (managed) or 19 (independent) of Schedule 3 to the 2002 Act, the IPCC has the power to make recommendations and give directions as to whether there is a case to answer.

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

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

Action prior to misconduct meetings/hearings

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

2.145 Where the appropriate authority consider that there is a case to answer in respect of misconduct and that management action would not be appropriate or sufficient (for example because the police officer has a live Superintendent's warning issued under the previous procedures or the misconduct is serious enough to justify a written warning being given) then a misconduct meeting/hearing should be arranged and the police officer shall, subject to the harm test, be given a copy of the investigation report (or the part of the report which is relevant to him or her), any other relevant documents gathered during the course of the investigation and a copy of his statement to the investigator.

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

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

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

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

2.150 It is important to note that in cases where the misconduct to be considered was identified as a direct result of a complaint, then any decision by the appropriate authority to hold or not to hold a particular misconduct proceeding may be subject to an appeal by the complainant. The appropriate authority, having made its decision on the outcome of the investigation into the complaint and whether there is a case to answer in respect of misconduct or gross misconduct will notify the complainant of its determination and inform the complainant of their right of appeal. The police officer subject of the investigation into his or her conduct should be informed of the determination of the appropriate authority but also informed that the appropriate authority's decision could be subject of an appeal by the complainant to the IPCC, PCCS or PONI. The appropriate authority should then wait until either the 28 + 2 days² period that the complainant may appeal has elapsed or an appeal has been received and decided by the IPCC, PCCS or PONI before serving the written notice described in paragraph 2.148 confirming how the proceedings are to be dealt with.

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

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

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

² The statutory period for a complainant to appeal is 28 days. However the 2 extra days are provided for the IPCC, PCCS or PONI to process and inform the appropriate authority that an appeal has been received.

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

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

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

2.156 If the police officer concerned submits a compelling reason why such a person should not be involved in the meeting/hearing, a replacement should be found and the police officer will be notified of the name of the replacement and the police officer concerned will have the same right to object to that person.

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

Documents for the meeting/hearing

2.158 The person(s) conducting the misconduct meeting/hearing shall be supplied (in accordance with regulation 28) with:

- a. A copy of the notice supplied to the police officer that set out the fact that the case was to be referred to a misconduct meeting/hearing and details of the alleged misconduct etc.
- b. A copy of the investigator's report or such parts of the report that relate to the police officer concerned, any other relevant document gathered during the course of the investigation and a copy of any statement by the officer concerned.
- c. The notice provided by the police officer setting out whether or not the police officer accepts that his or her conduct amounts to misconduct or gross misconduct, any submission he or she wishes to make in mitigation where the conduct is accepted, and where he or she does not accept that the alleged conduct amounts to misconduct or gross misconduct or he or she disputes part of the case, the allegations he or she disputes and his or her account of the relevant events; any arguments on points of law submitted by the police officer concerned as well as any documents he intends to rely on at the meeting/hearing, submitted under regulation 22 of the Conduct Regulations.
- d. Where the police officer concerned does not accept that the alleged conduct amounts to misconduct or gross misconduct as the case may be or where he or she disputes any part of the case, any other documents that in the opinion of the appropriate authority should be considered at the meeting/hearing.
- e. Any other documents that the person(s) conducting the meeting/hearing request that are relevant to the case

2.159 The documents for the meeting/hearing should be given to the person(s) conducting the meeting/hearing as soon as practicable after he, she or they have been appointed to conduct the meeting/hearing.

Witnesses

2.160 Generally speaking misconduct meetings and hearings will be conducted without witnesses. A witness will only be required to attend a misconduct meeting/hearing if the person conducting or chairing the meeting/hearing reasonably believes his or her attendance is necessary to resolve disputed issues in that case. The appropriate authority should meet the reasonable expenses of any witnesses.

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

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

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

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

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

Misconduct meetings/hearings

Types of misconduct proceedings

2.166 There are two types of misconduct proceedings:

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

2.167 It is important that misconduct hearings are only used for those matters where the police officer has a live final written warning and has potentially committed a further act of misconduct that warrants misconduct proceedings or the misconduct alleged is so serious that it is genuinely

considered that if proven or admitted dismissal from the police service would be justified.

Timing for holding meetings/hearings

2.168 A misconduct meeting shall take place not later than 20 working days beginning with the first working day after the date on which the documents and material for the meeting have been supplied to the police officer under Regulation 21 of the Conduct Regulations. Misconduct hearings shall take place not later than 30 working days beginning with the first working day after the date the documents for the hearing have been supplied to the police officer concerned.

2.169 The time limit for holding a misconduct meeting or a misconduct hearing can be extended if in the interests of justice the person conducting or chairing the misconduct proceedings considers it appropriate to extend beyond that period. Any decision to extend or not to extend the time limit for a meeting/hearing and the reasons for it will be documented by that person and communicated to the appropriate authority and the police officer concerned. It is also good practice to inform the police friend of the police officer concerned (if applicable).

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

Purpose of misconduct meeting/hearing

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

- a. Give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents and to put forward any factors the police officer wishes to be considered in mitigation (in addition to the submission which must be sent in advance to the person(s) conducting or chairing the meeting/hearing for his, her or their consideration).
- b. Decide if the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour based on the balance of probabilities and having regard to all of the evidence and circumstances.

- c. Consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any live written warnings or final written warnings (and any previous disciplinary outcomes that have not expired³) and any early admission of the conduct by the police officer.

Person(s) appointed to hold misconduct meetings/hearings

Misconduct meeting - Non senior officers (regulation 25)

2.172 A misconduct meeting for non senior officers (police officers up to and including the rank of Chief Superintendent) will be heard by a police officer of at least one rank above the police officer concerned. For all ranks of inspector and below this will be heard by at least a Chief Inspector.

2.173 An appropriate manager may also be appointed as an adviser to the person appointed to hold the meeting if the appropriate authority considers it appropriate in the circumstances. The adviser's role is solely to advise on the procedure to be adopted and not as a decision maker. The manager appointed to conduct the meeting and (where appropriate) the adviser must be sufficiently independent in relation to the matter concerned (for example without any previous involvement in the matter) as to avoid any suggestion of unfairness.

Misconduct hearing - Non senior officers (regulation 25)

2174 A misconduct hearing for non senior officers will consist of a 3 person panel comprising:

- a. A senior officer, who shall be the chair
- b. A police officer of the rank of superintendent or above, who is at least one rank above the officer concerned
- c. A person selected by the appropriate authority from a list of candidates maintained by the MOD Police Committee for the purposes of these regulations

2.175 The appropriate authority may appoint a person to advise the persons conducting the misconduct hearing and the adviser may be a relevant lawyer if required.

Misconduct meetings/hearings - Senior officers (regulations 26 and 27)

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

³ See Regulation 15 of The Police Regulations 2003 (SI 2003 No.527)

Misconduct Hearings in Public

2.177 Where a misconduct hearing (not misconduct meetings) arises from a case where the IPCC or PONI have conducted an independent investigation (in accordance with paragraph 19 of Schedule 3 to the 2002 Act or with the relevant provisions of the 1998 Act) and the IPCC or PONI considers that because of its gravity or other exceptional circumstances it would be in the public interest to do so, the IPCC or PONI may, having consulted with the appropriate authority, the police officer concerned, the complainant and any witnesses, direct that the whole or part of the misconduct hearing will be held in public.

2.178 The IPCC have published criteria for deciding when such cases will be held in public and a copy of this is available from the IPCC or the IPCC website at www.ipcc.gov.uk.

Joint meetings/hearings

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

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

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

Meeting/hearing in absence of officer concerned

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

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

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

Conduct of misconduct meeting/hearing

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

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

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

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

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

2.190 Where there is evidence at the meeting or hearing that the police officer concerned, at any time after being given written notice under regulation 15 of the Conduct Regulations (or regulation 14A of the Complaint Regulations), failed to mention when interviewed or when making representations to the investigator or under regulation 22 of the Conduct

Regulations, any fact relied on in his or her defence at the meeting/hearing, being a fact which in the circumstances existing at the time the police officer concerned could reasonably have been expected to mention when questioned or providing a written response, the person(s) conducting the meeting/hearing may draw such inferences from this failure as appear appropriate.

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

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

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

Standard of proof

2.194 In deciding matters of fact the misconduct meeting/hearing must apply the standard of proof required in civil cases, that is, the balance of probabilities. Conduct will be proved on the balance of probabilities if the person(s) conducting the meeting/hearing is/are satisfied by the evidence that it is more likely than not that the conduct occurred.

2.195 Misconduct meeting/hearings should bear in mind the fact that police officers may be required to deal with some people who may have a particular motive for making false or misleading allegations against the police officer.

2.196 Therefore, in making a decision whether the alleged conduct of a police officer is found or not, the person(s) conducting the misconduct meeting/hearing will need to exercise reasonable judgement having regard to all the circumstances of the case.

Outcomes of meetings/hearings

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

2.198 In considering the question of outcome the person(s) conducting the meeting/hearing will need to take into account any previous written warnings (imposed under the Conduct Regulations but not Superintendent's warnings issued under the previous procedures) that were live at the time of the initial assessment of the conduct in question, any aggravating or mitigating factors and have regard to the police officer's record of service, including any previous disciplinary outcomes that have not been expunged. The person(s) conducting the meeting/hearing may (only if deemed necessary and at the person(s) conducting the meeting/hearings discretion) receive evidence from any witness whose evidence would in their opinion assist them in this regard.

2.199 The person(s) conducting the meeting/hearing are also entitled to take account of any early admission of the conduct on behalf of the police officer concerned and attach whatever weight to this as he, she or they consider appropriate in the circumstances of the case.

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

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

Outcomes available at misconduct meetings/hearings

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

[a] Management advice

The police officer will be told:

- a. The reason for the advice
- b. That he or she has a right of appeal and the name of the person to whom the appeal should be sent.

[b] Written warning

The police officer will be told:

- a. The reason for the warning.

- b. That he or she has a right to appeal and the name of the person to whom the appeal should be sent.
- c. That the warning will be put on his or her personal file and will remain live for twelve months from the date the warning is given. This means that any misconduct in the next 12 months is likely to lead to (at least) a final written warning.

[c] Final written warning

The police officer will be told:

- a. The reason for the warning.
- b. That any future misconduct may result in dismissal
- c. That he or she has a right to appeal and the name of the person to whom the appeal should be sent.
- d. That the final written warning will be put on his or her personal file and will remain live for eighteen months from the date the warning is given. This means that only in exceptional circumstances will further misconduct (that justifies more than management advice) not result in dismissal. (In exceptional circumstances only, the final written warning may be extended for a further 18 months on one occasion only.)

At a misconduct hearing, in addition to the outcomes available at [a], [b] and [c] above the persons conducting the hearing will also have available the outcomes of:

[d] Dismissal with notice – The notice period will be determined by the persons conducting the meeting subject to a minimum of 28 days.

[e] Dismissal without notice.

Dismissal without notice will mean that the police officer is dismissed from the force with immediate effect.

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

2.204 Where a case is referred to a misconduct meeting and the police officer concerned has a live written warning⁴ and the police officer either admits or is found at the meeting to have committed a further act of misconduct, then the person conducting the misconduct meeting cannot impose another written warning. The person conducting the meeting will need to decide whether to take no action, give management advice or if he or she determines that either type of written warning is appropriate shall impose a final written warning.

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

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

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

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

Notification of the outcome

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

⁴ A written warning or final written warning is live if at the time the latest allegation of misconduct was assessed (under regulation 12 of the Conduct Regulations or paragraph 19B of the 2002 Act) the officer concerned had an outstanding written warning or final written warning that had not expired.

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

2.211 In the case of a police officer who has attended a misconduct hearing, the notification will include his or her right of appeal to a Police Appeals Tribunal against any finding and/or outcome imposed.

2.212 In cases involving a complainant, where the complaint was subject of a local or supervised investigation the appropriate authority will be responsible for informing the complainant of the outcome. In cases managed or independently investigated by the IPCC or PONI, the IPCC or PONI will be responsible for informing the complainant of the outcome.

Expiry of Warnings

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

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

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

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

Special Priority Payment/Competency Related Threshold Payment

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

Attendance of complainant or interested person at misconduct proceedings

2.218 Where a misconduct meeting/hearing is being held as a direct result of a public complaint, the complainant or interested person will have the right to attend the meeting/hearing as an observer up until the point at which disciplinary action is considered (in addition to attending as a witness if required to do so). This right is subject to the right of the chair or person conducting the proceedings to exclude or impose conditions on the complainant's or interested party's attendance to facilitate the proper conduct of proceedings and to exclude them while evidence is being given, the disclosure of which to them would be contrary to the harm test. He or she may be accompanied by one other person and, if they have a special need, one further person to accommodate that need e.g. an interpreter, sign language expert etc.). The appropriate authority will therefore be responsible for notifying the complainant or interested person of the date, time and place of the misconduct meeting/hearing.

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

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

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

2.222 A complainant and any person accompanying the complainant will be permitted to remain in the meeting/hearing up to and including any finding by the person(s) conducting the meeting/hearing, after having given evidence (if appropriate). The complainant and any person accompanying the complainant will not be permitted to remain in the meeting/hearing whilst character references or mitigation are being given or the decision of the panel as to the outcome. However, the appropriate authority will have a duty to inform the complainant of the outcome of any misconduct meeting/hearing whether the complainant attends or not.

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

IPCC or PONI direction and attendance at meetings/hearings

2.224 Where the IPCC exercises its power (under paragraph 27 of Schedule 3 to the 2002 Act) or PONI exercises its equivalent power (under the 1998 Act) to direct an appropriate authority to hold a misconduct meeting/hearing, this will also include a direction as to whether the proceedings will be a misconduct meeting or hearing. In making such a direction the IPCC or PONI will have regard to the severity assessment that has been made in the case and been notified to the police officer concerned.

2.225 Where a misconduct meeting/hearing is to be held following:

- a. an investigation managed or independently investigated by the IPCC or PONI; or
- b. a local or supervised investigation where the IPCC has made a recommendation under paragraph 27(3) of Schedule 3 of Police Reform Act 2002, or the PONI has made a recommendation under equivalent provisions in the 1998 Act, that misconduct proceedings should be taken and the recommendation has been accepted by the appropriate authority; or
- c. the IPCC has given a direction under paragraph 27(4) of that Schedule, or the PONI has given a direction under equivalent provisions of the 1998 Act, that misconduct proceedings shall be taken

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

2.226 Where the IPCC or PONI is to attend a misconduct hearing, it may instruct a relevant lawyer to represent it.

Right of appeal

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

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

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

2.230 The police officer concerned may only appeal on the grounds that:

- a. the finding or disciplinary action imposed was unreasonable;
- b. there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action;
or
- c. there was a serious breach of the procedures set out in the regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

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

2.231 An appeal against the finding and/or the outcome from a misconduct meeting will be heard by a member of the police service of a higher rank of a higher grade than the person who conducted the misconduct meeting.

2.232 A police officer may be present to advise the person conducting the appeal on procedural matters.

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

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

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

2.235 Where the person appointed to hear the appeal determines that there are arguable grounds of appeal and the police officer concerned has requested to be present at the appeal meeting, the person appointed to conduct the proceedings will hold a meeting with the police officer concerned.

Where the police officer fails to attend the meeting, the person conducting the appeal may proceed in the absence of the police officer concerned.

2.236 The person conducting the appeal may consider:

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

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

2.238 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.

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

Appeal following misconduct hearing – non senior officers

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

Appeals against misconduct meetings/hearings – senior officers

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

ANNEX A

FAST TRACK PROCEDURES (SPECIAL CASES)

Introduction

1. The following paragraphs provide guidance on the operation of the fast track misconduct procedures, referred to as “special cases” in the Conduct Regulations. Part 5 of the Conduct Regulations set out the procedures for dealing with special cases.
2. The special case procedures can only be used if the appropriate authority certifies the case as a special case, having determined that the ‘special conditions’ are satisfied or if the IPCC has given a direction under paragraph 20H(7) of Schedule 3 to the Police Reform Act 2002 or if PONI has given a direction under equivalent provisions of the 1998 Act.
3. The ‘special conditions’ are that:
 - a. there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities, that the conduct of the police officer concerned constitutes gross misconduct; and
 - b. it is in the public interest for the police officer concerned to cease to be a police officer without delay.
4. These procedures are therefore designed to deal with cases where the evidence is incontrovertible in the form of statements, documents or other material (e.g. CCTV) and is therefore sufficient without further evidence to prove gross misconduct and it is in the public interest, if the case is found or admitted for the police officer to cease to be a member of the force forthwith.
5. Even where the criteria for special cases are met there may be circumstances where it would not be appropriate to certify the case as a special case, for instance, where to do so might prematurely alert others (police officers or non-police officers) who are, or may be, the subject of an investigation.
6. In the case of non senior officers the case will be heard by the chief constable or in cases where the chief constable is an interested party or is unavailable, a chief constable from another police force. In the case of a senior officer, the case will be heard by a panel as set out in Regulations 47 and 48 of the Conduct Regulations. The police officer will have a right of appeal under regulation 56 of the Conduct Regulations to a Police Appeals Tribunal against any finding of gross misconduct and the disciplinary action imposed.

Complaint cases

7. Where a matter that meets the criteria for using the special case procedures has arisen from a complaint by a member of the public, the complainant or interested person will have the right to attend the special case hearing as an observer subject to any conditions imposed by the person conducting proceedings under regulation 53(3) of the Conduct Regulations.

8. Where a complainant or interested person is to attend a special case hearing he or she will be entitled to be accompanied by one other person and if the complainant or interested person has a special need, by one further person to accommodate that need.

9. A complainant or interested person and any person accompanying the complainant or interested person will be permitted to remain in the hearing up to and including any finding by the person (or persons in the case of a senior officer) conducting the hearing. The complainant or interested person and any person accompanying the complainant or interested person will not be permitted to remain in the hearing whilst character references or mitigation are being given or the decision of the person conducting the hearing (or persons in the case of a senior officer) as to the outcome. However, the appropriate authority will have a duty (in cases investigated locally or supervised by the IPCC or PONI) to inform the complainant or interested person of the outcome of the hearing whether the complainant or interested person attends or not.

Evidence

10. There will be no oral witness testimony at the special case hearing other than from the police officer concerned. There will be copies of the notice given to the police officer, the certificate certifying the case as a special case, the notice the police officer has supplied in response, including any documents he or she provides in support of his or her case, a copy of the investigator's report or such parts of that report as relate to the police officer concerned, statements made by the police officer during the investigation, and in a case where the police officer concerned denies the allegation against him or her, copies of all statements and documents that in the opinion of the appropriate authority should be considered at the hearing.

Special case process

Procedure for consideration in advance of the hearing

11. Where the appropriate authority determines that the special conditions (see paragraph 2 above) are satisfied, unless it considers that the circumstances are such to make it inappropriate to do so, he, she or it shall certify the case as a special case and refer it to a special case hearing. The decision as to whether a case is suitable for using the fast track procedure will be taken by the appropriate authority which must determine whether it believes the special conditions are satisfied having regard to the available

evidence and any other relevant information. The appropriate authority will be the Police Committee in the case of a senior officer or the chief constable in the case of a non-senior officer. If the chief constable delegates this decision, that decision must be authorised by a senior officer.

12. If the appropriate authority decides that the special case procedures will not be used then he, she or it will refer it back to the investigator if further investigation is required or to the appropriate authority to proceed under the standard procedures.

13. If the appropriate authority decides that the special case procedures should be used then he, she or it will sign a "Special Case Certificate" and will provide to the police officer concerned notice giving particulars of the conduct that is alleged to constitute gross misconduct and copies of:

- a. the Special Case Certificate
- b. any statement the police officer may have made to the investigator during the course of the investigation
- c. Subject to the harm test, :
 - i. the investigator's report(if any) or such parts of that report as relate to the police officer concerned, together with any documents attached to that report; and
 - ii. any relevant statement or documents gathered during the course of the investigation

14. The police officer concerned will also be told the date, time and place of the hearing and of his or her right to legal representation and to advice from a 'police friend'.

15. 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 police officer concerned.

16. Within 7 working days of the first working day after the day on which the written notice and documents are supplied to the police officer concerned, the police officer shall provide a written notice to the appropriate authority of:

- a. whether or not he or she accepts that his or her conduct constituted gross misconduct
- b. where he or she accepts that the conduct constituted gross misconduct, any submission he or she wishes to make in mitigation

- c. where he or she does not accept that the conduct constituted gross misconduct
- d. the allegations he or she disputes and his or her version of the relevant events; and
- e. any arguments on points of law he or she wishes to be considered by the person or persons conducting the hearing.

17. At the same time the police officer shall provide the person conducting or chairing (in the case of a senior officer) the hearing with copies of any documents he or she intends to rely on at the hearing (see regulation 45).

18. The chief constable (or the chair of the hearing in the case of a senior officer) should be provided with the papers and it should be seen as good practice to provide them at least 3 working days prior to the hearing.

Outcome of special case hearing

19. Where the person(s) conducting the special case hearing find that the conduct of the police officer concerned constituted gross misconduct, then he, she or they shall impose disciplinary action, which may be:

- a. Dismissal without notice.
- b. A final written warning (unless a final written warning has been imposed on the police officer concerned within the previous 18 months).
- c. an extension of a final written warning.

20. Where the police officer concerned has received a final written warning within the 18 months prior to the assessment of the conduct then in exceptional circumstances only, the final written warning may be extended by a further 18 months. An extension of a final written warning can occur on one occasion only.

21. Where the person(s) conducting the hearing determines that the conduct does not amount to gross misconduct, then he, she or they may dismiss the case.

22. Alternatively, he, she or they may return the case to the appropriate authority to deal with at a misconduct meeting or hearing (where there is a live final written warning) under the standard procedures. This may be because the person(s) conducting the hearing consider that the conduct is misconduct rather than gross misconduct.

23. There is power under regulation 42 for the appropriate authority to remit the case to be dealt with under the standard procedures at any time

prior to the start of the special case hearing. This might be because he, she or it considers that a particular witness whose evidence is crucial to the case and is disputed must be called to give oral testimony.

24. Where the police officer admits the allegation or the person(s) conducting the hearing find it proved on the balance of probabilities, then the person(s) conducting the hearing:

- a. shall have regard to the record of police service of the police officer concerned as shown on his or her personal record;
- b. may consider such documentary evidence as would, in his, her or their opinion, assist him, her or them in determining the question; and
- c. shall give the police officer concerned, and his or her police friend or relevant lawyer, an opportunity to make oral or written representations.

25. The police officer concerned shall be informed of the finding and any disciplinary action imposed or a decision to dismiss the case or revert it back to be dealt with under the standard procedures as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons within 5 working days beginning with the first working day after the conclusion of the hearing.

Absence of police officer concerned at the hearing

26. The hearing may proceed in the absence of the police officer concerned, but the person(s) conducting the hearing should ensure that the police officer concerned has been informed of his or her right to be legally represented at the hearing or to be represented by a police friend where the police officer chooses not to be legally represented.

ANNEX B

Misconduct Meetings/Hearings

Senior Police Officers

1. This section sets out the persons who will hear a misconduct case involving a senior police officer that has been referred to either a misconduct meeting or misconduct hearing.

Misconduct Meeting/Hearings – Chief Constables

2. Where a case is referred to a misconduct meeting and the police officer concerned is:

(a) the chief constable;

the misconduct proceedings shall be conducted by the following panel of persons appointed by the appropriate authority:

- a. the chair of the Police Committee, or another member of the Police Committee nominated by the chair, who shall be the chair; and
- b. HMCIC or an inspector of constabulary nominated by HMCIC.

3. For a misconduct hearing, those persons are:

- a. a counsel selected by the appropriate authority from a list of candidates nominated by the Secretary of State for the purposes of these regulations, who shall be the chair;
- b. the chair of the Police Committee or another member of the Police Committee nominated by the chair;
- c. HMCIC or an inspector of constabulary nominated by HMCIC; and
- d. a person selected from a list of candidates maintained by the Police Committee

Misconduct Meeting/Hearings – other senior officers.

4. Where the case is referred to a misconduct meeting and the police officer concerned is a senior officer other than one mentioned above, those proceedings shall be conducted by the following panel of persons appointed by the appropriate authority:

- a. the chief constable

- b. the chair of the Police Committee or another member of the Police Committee nominated by the chair.
5. For misconduct hearings, those persons are:
 - a. HMCIC or an inspector of constabulary nominated by HMCIC, who shall be the chair;
 - b. the chief constable;
 - c. the chair of the Police Committee or another member of the Police Committee nominated by that chair;
 - d. a person selected from a list of candidates maintained by the Police Committee for the purposes of the Conduct Regulations.
6. The senior officer concerned should be informed of the names of the persons appointed to conduct the misconduct meeting/hearing together with the name of any person appointed to advise such persons at the meeting/hearing as soon as reasonably practicable after they have been appointed.
7. The senior officer may object to any person hearing or advising at a misconduct meeting or hearing in accordance with regulation 21 of the Conduct Regulations. In doing so the senior officer concerned will need to set out clear objections as to why a particular person(s) should not conduct or advise at the meeting.
8. If the senior officer concerned submits a compelling reason why such a person should not be involved in the meeting/hearing then, in the interests of fairness, a replacement should be found. The senior officer will be informed who the replacement is and will have the right to object to such person if he or she submits compelling reasons why the replacement should not be involved in the meeting/hearing in accordance with the procedure set out in regulation 21 of the Conduct Regulations.