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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

**The Police (Conduct) Regulations 2008**

**PART 4**

**Misconduct Proceedings**

**Referral of case to misconduct proceedings**

**19.**—(1) Subject to regulation 41 and paragraph (6)—

- (a) on receipt of the investigator's written report; and
- (b) in the case of such a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations), in making a determination under paragraph 23(7) or 24(6) of Schedule 3 to the 2002 Act (action in response to an investigation report) as to what action to take in respect of matters dealt with in that report,

the appropriate authority shall, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) Subject to paragraph (6), in a case where the disciplinary proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall, subject to regulation 41(3), make a further determination as to whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) Where the appropriate authority determines there is no case to answer, it may—

- (a) take no further disciplinary action against the officer concerned;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(4) Where the appropriate authority determines that there is a case to answer in respect of gross misconduct, it shall, subject to regulation 9(3) and paragraph (2), refer the case to a misconduct hearing.

(5) Where the appropriate authority determines that there is a case to answer in respect of misconduct, it may—

- (a) subject to regulation 9(3) and paragraph (2), refer the case to misconduct proceedings; or
- (b) take management action against the officer concerned.
- (c) Where the appropriate authority—
- (d) accepts a recommendation under paragraph 27(3) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings) that proceedings are brought at a misconduct meeting or a misconduct hearing; or
- (e) has a duty under paragraph 27(4) (duties with respect to disciplinary proceedings) of that Schedule to comply with a direction to give effect to such a recommendation

it shall, subject to regulation 9(3), refer the case to such a meeting or hearing.

- (6) Where the appropriate authority fails to—
- (a) make the determination referred to in paragraph (1); and
  - (b) where appropriate, decide what action to take under paragraph (5)

before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, it shall notify the officer concerned of the reason for this.

(7) Where under paragraph (5) the appropriate authority determines to take management action, it shall give the officer concerned written notice of this as soon as practicable.

(8) Where the appropriate authority determines under paragraph (5) to refer the case to misconduct proceedings—

- (a) where the officer concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), those proceedings shall be a misconduct hearing;
- (b) where the officer concerned has been reduced in rank under the Police (Conduct) Regulations 2004 less than 18 months prior to the assessment of conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), those proceedings shall be a misconduct hearing; and
- (c) in all other cases those proceedings shall be a misconduct meeting.

#### **Withdrawal of case**

**20.**—(1) Subject to paragraph (3), at any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

- (2) Where a direction is given under paragraph (1)—
- (a) the appropriate authority may—
    - (i) take no further action against the officer concerned;
    - (ii) take management action against the officer concerned; or
    - (iii) refer the matter to be dealt with under the Performance Regulations; and
  - (b) the appropriate authority shall as soon as practicable give the officer concerned—
    - (i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a); and
    - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report as relate to the officer concerned.

(3) This regulation shall not apply to a case to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies.

#### **Notice of referral to misconduct proceedings and panel membership**

**21.**—(1) Where a case is referred to misconduct proceedings, the appropriate authority shall as soon as practicable give the officer concerned—

- (a) written notice of—
  - (i) the referral;
  - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;

- (iii) the name of the person appointed to (in the case of a misconduct meeting for an officer other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation; and
  - (iv) the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
- (b) a copy of any statement he may have made to the investigator during the course of the investigation; and
  - (c) subject to the harm test, a copy of—
    - (i) the investigator’s report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him); and
    - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after—
- (a) any person has been appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings; and
  - (b) where the misconduct proceedings are to be conducted by a panel, the person or persons comprising that panel (other than the chair) have been determined,
- the appropriate authority shall give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person whom he is notified under this regulation is to—
- (a) conduct (including chair) his misconduct proceedings; or
  - (b) advise the person or persons conducting those proceedings.
- (4) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person’s name and must set out the grounds of objection of the officer concerned.
- (5) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to any panel member or to any person appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings.
- (6) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulations 7(5) and (6) or 25 to 27 as appropriate).
- (7) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member, or the adviser to the person or persons conducting the misconduct proceedings, as the case may be.
- (8) The officer concerned may object to the appointment of a person appointed under paragraph (6).
- (9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7); and the appropriate authority shall comply with paragraphs (5) to (7) in relation to that objection.
- (10) In this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case the officer concerned has to answer.

**Procedure on receipt of notice**

**22.—**(1) Before the end of—

- (a) 14 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1); or
  - (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,
- the officer concerned shall comply with paragraphs (2) and (3).
- (2) The officer concerned shall provide to the appropriate authority—
    - (a) written notice of whether or not he accepts that his conduct amounts to misconduct or gross misconduct as the case may be;
    - (b) where he accepts that his conduct amounts to misconduct or gross misconduct as the case may be, any written submission he wishes to make in mitigation;
    - (c) where he does not accept that his conduct amounts to misconduct or gross misconduct as the case may be, or he disputes part of the case against him, written notice of—
      - (i) the allegations he disputes and his account of the relevant events; and
      - (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the misconduct proceedings.
  - (3) The officer concerned shall provide the appropriate authority with a copy of any document he intends to rely on at the misconduct proceedings.
  - (4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority and the officer concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce and their address.
  - (5) Where there are proposed witnesses, the officer concerned shall, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

### **Witnesses**

- 23.**—(1) As soon as practicable after any list of proposed witnesses has been—
- (a) agreed under regulation 22(5); or
  - (b) where there is no agreement under regulation 22(4), supplied under regulation 22(4),
- the appropriate authority shall supply that list to the person conducting or chairing the misconduct proceedings.
- (2) The person conducting or chairing the misconduct proceedings shall—
    - (a) consider the list or lists of proposed witnesses; and
    - (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.
  - (3) No witness shall give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case he shall—
    - (a) where the witness is a police officer, cause that person to be ordered to attend the misconduct proceedings; and
    - (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the proceedings.

### **Timing and notice of misconduct proceedings**

**24.**—(1) Subject to paragraphs (2) and (6), the misconduct proceedings shall take place—

- (a) in the case of a misconduct meeting, before the end of 20 working days; or
- (b) in the case of a misconduct hearing, before the end of 30 working days

beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where he considers that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the appropriate authority, he shall provide written notification of his reasons for that decision to the appropriate authority and the officer concerned.

(4) The person conducting or chairing the misconduct proceedings shall, if reasonably practicable, agree a date and time for the misconduct proceedings with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct proceedings shall specify a date and time for those proceedings.

(6) Where a date and time is specified under paragraph (5) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies subsection (7),

the misconduct proceedings shall be postponed to the time proposed by the officer concerned.

(7) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting or chairing the misconduct proceedings.

(8) The officer concerned shall be given written notice of the date, time and place of the misconduct proceedings.

### **Persons conducting misconduct proceedings: officers other than senior officers**

**25.**—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) The misconduct meeting shall be conducted by a person appointed by the appropriate authority who is not an interested party and who satisfies paragraph (3).

(3) The person shall—

- (a) where—
  - (i) the officer concerned is a member of a police force, be another member of a police force of at least one rank higher than the officer concerned;
  - (ii) the officer concerned is a special constable, be a member of a police force of the rank of sergeant or above or a senior human resources professional; or
- (b) unless the case substantially involves operational policing matters, be a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned.

(4) Where the case is referred to a misconduct hearing, that hearing shall be conducted by a panel of three persons appointed by the appropriate authority, comprising—

- (a) a senior officer or a senior human resources professional, who shall be the chair;

- (b) where—
  - (i) the chair is a senior officer, a member of a police force of the rank of superintendent or above or a human resources professional;
  - (ii) the chair is a senior human resources professional, a member of a police force of the rank of superintendent or above; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by a police authority for the purposes of these Regulations.

(5) For the purposes of this regulation, a “senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to conduct the misconduct hearing or misconduct meeting as the case may be.

**Persons conducting misconduct proceedings: chief constables etc.**

26.—(1) Where the officer concerned is—

- (a) a chief constable;
- (b) in the case of the metropolitan police force—
  - (i) the commissioner;
  - (ii) the deputy commissioner; or
  - (iii) an assistant commissioner; or

(c) in the case of the City of London police force, the commissioner,

the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

(2) For a misconduct meeting, those persons are—

- (a) the chair of the police authority for the police force concerned, or another member of that police authority nominated by him, who shall chair the meeting; and
- (b) HMCIC or an inspector of constabulary nominated by him.

(3) For a misconduct hearing, those persons are—

- (a) a barrister 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 authority for the police force concerned, or another member of that police authority nominated by him;
- (c) HMCIC or an inspector of constabulary nominated by him; and
- (d) a person selected by the appropriate authority from a list of candidates maintained by a police authority for the purposes of these Regulations.

**Persons conducting misconduct proceedings: other senior officers**

27.—(1) Where the officer concerned is a senior officer other than one mentioned in regulation 26(1), the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

(2) For a misconduct meeting, those persons are—

- (a) (i) where the officer concerned is a member of the Metropolitan Police Force, an assistant commissioner or a senior officer of at least one rank above that of the officer concerned nominated by an assistant commissioner, who shall be the chair; or

- (ii) where the officer concerned is a member of the City of London police, the commissioner or a senior officer of at least one rank above that of the officer concerned nominated by the commissioner, who shall be the chair; or
  - (iii) in any other case, the chief officer of police of the police force concerned or a senior officer of at least one rank above that of the officer concerned nominated by that chief officer of police, who shall be the chair; and
- (b) the chair of the police authority for the police force concerned or another member of that police authority nominated by him.
- (3) For a misconduct hearing, those persons are—
- (a) HMCIC or an inspector of constabulary nominated by him, who shall be the chair;
  - (b) the chief officer of police of the police force concerned or a senior officer of at least one rank above that of the officer concerned nominated by that chief officer of police;
  - (c) the chair of the police authority for the police force concerned or another member of that police authority nominated by him; and
  - (d) a person selected by the appropriate authority from a list of candidates maintained by a police authority for the purposes of these Regulations.

### **Documents to be supplied**

**28.**—(1) Prior to the hearing the appropriate authority shall supply the person or persons conducting the misconduct proceedings with a copy of—

- (a) the documents given to the officer concerned under regulation 21(1)(a) to (c)(ii);
- (b) the documents provided by the officer concerned under—
  - (i) regulation 22(2) and (3); and
  - (ii) where paragraph (2) applies, regulation 45; and
- (c) where the officer concerned does not accept that his conduct amounts to misconduct or gross misconduct as the case may be or where he disputes any part of the case against him, any other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.

(3) Prior to the hearing the officer concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any such document of which he has not already been supplied with a copy.

### **Attendance of officer concerned at misconduct proceedings**

**29.**—(1) Subject to paragraph (2), the officer concerned shall attend the misconduct proceedings.

(2) Where the officer concerned informs the person conducting or chairing the misconduct proceedings in advance that he is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the officer concerned to participate in the proceedings by video link or other means.

(3) Where the officer concerned is allowed to and does so participate in the misconduct proceedings or where the officer concerned does not attend the misconduct proceedings—

- (a) he may nonetheless be represented at those proceedings by his—
  - (i) police friend; or

- (ii) in the case of a misconduct hearing, his relevant lawyer (in which case the police friend may also attend); and
  - (b) the proceedings may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.
- (4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

### **Participation of Commission and investigator at misconduct proceedings**

**30.**—(1) In any case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied; or
- (b) paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigations by the appropriate authority or supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the Commission may attend the misconduct proceedings to make representations.

(2) Where the Commission so attends the misconduct proceedings—

- (a) if it is a misconduct hearing it may instruct a relevant lawyer to represent it;
- (b) it shall notify the complainant or any interested person prior to the hearing; and
- (c) the person conducting or chairing the misconduct proceedings shall notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person shall attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority; or
- (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied, the Commission,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the misconduct proceedings.

### **Attendance of complainant or interested person at misconduct proceedings**

**31.**—(1) This regulation shall apply in the case of misconduct proceedings arising from—

- (a) a conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied; or
- (b) the investigation of a complaint which was certified as subject to special requirements under paragraph 19B(1)(1) of that Schedule (assessment of seriousness of conduct).

(2) The appropriate authority shall notify the complainant or any interested person of the date, time and place of the misconduct proceedings.

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(1) Paragraph 19B was inserted into the 2002 Act by paragraph 5 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (c. 4).



(3) Subject to the provisions of this regulation, regulation 33 and any conditions imposed under regulation 32(8), the complainant or any interested person may attend the misconduct proceedings as an observer up to but not including the point at which the person conducting or chairing those proceedings considers the question of disciplinary action.

(4) Subject to paragraph (5), regulation 33 and any conditions imposed under regulation 32(8), a complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) Where a complainant or interested person, or any person accompanying him, is to give evidence as a witness at the misconduct proceedings, he and any person allowed to accompany him shall not be allowed to attend the proceedings before he gives his evidence.

(6) The person conducting or chairing the misconduct proceedings may, at his discretion, put any questions to the officer concerned that the complainant or interested person may request be put to him.

(7) For the purposes of this regulation, a person has a special need if, in the opinion of the person conducting or chairing the misconduct proceedings, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct proceedings.

#### **Attendance of others at misconduct proceedings**

**32.**—(1) Subject to regulation 31 and the provisions of this regulation, the misconduct proceedings shall be in private.

(2) A person nominated by the Commission may, as an observer, attend misconduct proceedings which arise from a case to which—

- (a) paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (supervised, managed and independent investigations) applied; or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority) applied and in relation to which the Commission—
- (c) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
- (d) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings).

(3) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned, shall only attend the misconduct proceedings for the purpose of giving their evidence.

(4) The person conducting or chairing the misconduct proceedings may, at his discretion, permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) Where a misconduct hearing arises from a case to which paragraph 19 of Schedule 3 to the 2002 Act (investigations by the Commission) applied and the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted with—

- (a) the appropriate authority;
- (b) the officer concerned;
- (c) the complainant or interested person; and
- (d) any witnesses,

direct that the whole or part of the misconduct hearing be held in public.

(6) It shall be the duty of the persons conducting the misconduct hearing to comply with a direction given under paragraph (5).

(7) A direction under paragraph (5), together with the reasons for it, shall be notified as soon as practicable, and in any event before the end of 5 working days beginning with the first working day after the decision was taken, to the persons consulted under that paragraph.

(8) The person conducting or chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under regulation 31 or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

### **Exclusion from misconduct proceedings**

**33.** Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test, ought not to be disclosed to any person attending the proceedings, he shall require such attendees to withdraw while the evidence is given.

### **Procedure at misconduct proceedings**

**34.—(1)** Subject to these Regulations, the person conducting or chairing the misconduct proceedings shall determine the procedure at those proceedings.

(2) The misconduct proceedings shall not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings taking place.

(3) Subject to paragraph (4), the person conducting or chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to him to be necessary or expedient to do so.

(4) The misconduct proceedings shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the officer concerned may—

(a) address the proceedings in order to do any or all of the following—

(i) put the case of the officer concerned;

(ii) sum up that case;

(iii) respond on behalf of the officer concerned to any view expressed at the proceedings;

(iv) make representations concerning any aspect of proceedings under these Regulations;  
and

(v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the officer concerned.

(6) Where (at a misconduct hearing) the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(7) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during the misconduct proceedings.

(8) Whether any question should or should not be put to a witness shall be determined by the person conducting or chairing the misconduct proceedings.

(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

(a) to him by the officer concerned in accordance with regulation 22(3); or

(b) to the officer concerned in accordance with regulation 21(1).

- (10) Where evidence is given at the misconduct proceedings that the officer concerned—
- (a) on being questioned by an investigator at any time after he was given written notice under regulation 15(1); or
  - (b) in submitting any information under regulations 16(1), 22(2) or (3) (or, where paragraph (11) applies, regulation 45),

failed to mention any fact relied on in his case at the misconduct proceedings, being a fact which in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.

(11) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.

(12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(13) The person or persons conducting the misconduct proceedings shall review the facts of the case and decide whether the conduct of the officer concerned amounts:

- (a) in the case of a misconduct meeting, to misconduct or not; or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(14) The person or persons conducting the misconduct proceedings shall not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the officer concerned admits it is the case.

(15) At misconduct proceedings conducted by a panel, any decision shall be based on a majority (with, where there is a panel of two or four, the chair having the casting vote if necessary) but shall not indicate whether it was taken unanimously or by a majority.

### **Outcome of misconduct proceedings**

**35.—**(1) Subject to the provisions of this regulation, the person or persons conducting the misconduct proceedings may—

- (a) impose any of the disciplinary action in paragraph (2)(a) or (b) or (6)(b) as appropriate; or
- (b) where he or they find the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.

(2) The disciplinary action is—

- (a) at a misconduct meeting—
  - (i) management advice;
  - (ii) written warning; or
  - (iii) final written warning;
- (b) at a misconduct hearing—
  - (i) management advice;
  - (ii) written warning;
  - (iii) final written warning;
  - (iv) dismissal with notice; or
  - (v) dismissal without notice.

(3) The disciplinary action referred to in paragraph (2) shall have effect from the date on which it is notified to the officer concerned and in the case of dismissal with notice, the person or persons conducting the misconduct hearing shall decide the period of notice to be given, subject to a minimum period of 28 days.

(4) Where the person or persons conducting the misconduct proceedings finds that the conduct of the officer concerned amounts to misconduct but not gross misconduct following a misconduct hearing, unless the officer concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), the officer concerned may not be dismissed whether with or without notice.

(5) Where the officer concerned had a written warning in force on the date of the assessment of the conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), a written warning shall not be given.

(6) Where the officer concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be)—

- (a) neither a written warning nor a final written warning shall be given; but
- (b) subject to paragraph (8), in exceptional circumstances, the final written warning may be extended.

(7) Where a final written warning is extended under paragraph (6)(b), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

(8) A final written warning may be extended on one occasion only.

(9) Where there is a finding of gross misconduct and the persons conducting the misconduct hearing decide that the officer concerned shall be dismissed, the dismissal shall be without notice.

(10) Where the question of disciplinary action is being considered, the person or persons conducting the misconduct proceedings—

- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in his or their opinion, assist him or them in determining the question; and
- (c) shall give—
  - (i) the officer concerned, his police friend or, at a misconduct hearing, his relevant lawyer; and
  - (ii) the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 7(4);

an opportunity to make oral or written representations before any such question is determined.

### **Notification of outcome**

**36.—**(1) The officer concerned shall be informed of—

- (a) the finding of the person or persons conducting the misconduct proceedings; and
- (b) any disciplinary action imposed,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings.

(2) Where there was a finding of misconduct or gross misconduct a written notice under this regulation shall include—

- (a) where the officer concerned is an officer other than a senior officer—
    - (i) if the case was decided at a misconduct meeting, notice of his right of appeal under regulation 38; or
    - (ii) if the case was decided at a misconduct hearing, notice of his right of appeal to a police appeals tribunal;
  - (b) where the officer concerned is a senior officer, notice of his right of appeal to a police appeals tribunal.
- (3) In all cases referred to in paragraph (2) a written notice under this regulation shall include the name of the person to whom an appeal should be sent.

### **Record of misconduct proceedings**

- 37.**—(1) A record of the misconduct proceedings shall be taken and in the case of a misconduct hearing that record shall be verbatim.
- (2) The officer concerned shall, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

### **Appeal from misconduct meeting: officers other than senior officers**

- 38.**—(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, he may, subject to the provisions of this regulation, appeal—
- (a) if he admitted his conduct amounted to misconduct, against any disciplinary action imposed under regulation 35; or
  - (b) if (after he denied misconduct) the person conducting the misconduct meeting found that his conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 35.
- (2) The only grounds of appeal under this regulation are 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 these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this regulation shall be commenced by the officer concerned giving written notice of appeal to the appropriate authority—
- (a) before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 36 (unless this period is extended by the appropriate authority for exceptional circumstances); and
  - (b) stating the grounds of appeal and whether a meeting is requested.
- (4) An appeal under this regulation shall be determined—
- (a) where the person who conducted the misconduct meeting was a member of a police force, by—
    - (i) a member of a police force of at least one rank higher than that person; or
    - (ii) unless the case substantially involves operational policing matters, a police staff member who, in the opinion of the appropriate authority, is more senior than that person;
  - (b) where the person who conducted the misconduct meeting was a police staff member, by—

(i) a member of a police force who, in the opinion of the appropriate authority is more senior than that person; or

(ii) a more senior police staff member;

who is not an interested party, appointed by the appropriate authority.

(5) The appropriate authority shall as soon as practicable give the officer concerned written notice of—

(a) the name of the person appointed to determine the appeal under paragraph (4);

(b) the name of any person appointed under regulation 7(5) to advise the person determining the appeal; and

(c) the effect of paragraphs (6) to (9) of this regulation.

(6) The officer concerned may object to any person whom he is notified under this regulation is to—

(a) determine the appeal; or

(b) advise the person determining the appeal.

(7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(8) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to conduct the appeal meeting or to any person appointed under regulation 7(5) to advise the person conducting the appeal meeting.

(9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulation 7(5) or (6) or paragraph (4) as appropriate).

(10) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal as the case may be.

(11) The officer concerned may object to the appointment of a person appointed under regulation (9).

(12) Any such objection must be made in accordance with paragraph (7), provided that it must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10); and the appropriate authority shall comply with paragraphs (8) to (10) in relation to that objection.

### **Appeal meeting**

**39.**—(1) This regulation applies where the officer concerned requests a meeting in his written notice of appeal under regulation 38(3).

(2) The person determining the appeal shall determine whether the notice of appeal sets out arguable grounds of appeal and—

(a) if he determines that it does he shall hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination; and

(b) if he determines that it does not, he shall dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where he considers that it would be in the interests of justice to do so.

(4) The person determining the appeal shall specify a date and time for the appeal meeting.

(5) Where—

- (a) the officer concerned or his police friend will not be available at that time; and
  - (b) the officer concerned proposes an alternative time which satisfies subsection (6),
- the appeal meeting shall be postponed to the time proposed by the officer concerned.
- (6) An alternative time must—
    - (a) be reasonable; and
    - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.
  - (7) Written notice of the date, time and place of the appeal meeting shall be given to—
    - (a) the officer concerned;
    - (b) where the misconduct meeting arose from a complaint which was certified as subject to special requirements under paragraph 19B(1) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct), the complainant; and
    - (c) where the misconduct meeting arose from a conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied, any interested person.
  - (8) Prior to the appeal meeting the appropriate authority shall supply the person determining the appeal with a copy of—
    - (a) the documents given to the person who held the misconduct meeting as specified in regulation 28(1);
    - (b) the notice of appeal given by the officer concerned under regulation 38(3);
    - (c) the record of the misconduct meeting taken under regulation 37(1); and
    - (d) any evidence of a kind referred to in regulation 38(2)(b) that the officer concerned wishes to submit in support of his appeal.

### **Procedure and finding of the appeal**

**40.**—(1) Subject to the provisions of this regulation, the person determining the appeal shall determine the procedure at the appeal meeting.

(2) Subject to paragraph (3), any interested person or complainant given notice of the appeal meeting under regulation 39(7) may attend the appeal meeting as an observer up to but not including the point at which the person determining the appeal considers the question of disciplinary action.

(3) The person determining the appeal may impose such conditions as he sees fit relating to the attendance of persons under paragraph (2) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

- (4) The person determining the appeal may—
  - (a) confirm or reverse the decision appealed against;
  - (b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with him under regulation 35.

(5) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the officer concerned shall be given written notice of that determination with a summary of the reasons.

(6) The decision of the person determining the appeal shall take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

- (7) In a case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act applied (managed and independent investigations); or
- (b) paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigation by appropriate authority and supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction to the appropriate authority under paragraph 27(4) of that Schedule (duties with respect to disciplinary proceedings),

the appropriate authority shall give the Commission written notice of the determination of the appeal with a summary of the reasons.